

# **EXHIBIT A**

08:21AM

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
3 SAN JOSE DIVISION

4  
5 CISCO SYSTEMS, INC., ) CV-14-5344-BLF  
6 )  
7 PLAINTIFF, ) SAN JOSE, CALIFORNIA  
VS. )  
8 ARISTA NETWORKS, INC., ) NOVEMBER 28, 2016  
9 )  
DEFENDANT ) VOLUME 3  
10 )  
 ) PAGES 261-533

11 TRANSCRIPT OF PROCEEDINGS  
12 BEFORE THE HONORABLE BETH LABSON FREEMAN  
UNITED STATES DISTRICT JUDGE

13 A P P E A R A N C E S:

14 FOR THE PLAINTIFF: DAVID A. NELSON  
15 QUINN EMANUEL URQUHART & SULLIVAN, LLP  
500 WEST MADISON STREET, SUITE 2450  
16 CHICAGO, IL 60661

17 FOR THE PLAINTIFF: QUINN, EMANUEL, URQUHART & SULLIVAN  
18 BY: SEAN PAK  
50 CALIFORNIA STREET, 22ND FLOOR  
19 SAN FRANCISCO, CALIFORNIA 94111

20  
21  
22 APPEARANCES CONTINUED ON NEXT PAGE

23 OFFICIAL COURT REPORTER: SUMMER FISHER, CSR, CRR  
24 CERTIFICATE NUMBER 13185

25 PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY  
TRANSCRIPT PRODUCED WITH COMPUTER

DIRECT EXAMINATION OF MR. LOUGHEED BY MR. PAK  
FROM THOSE NETWORKS ACROSS THROUGH OUR ROUTERS.

AND SO WE STARTED ADDING THESE OTHER NETWORK PROTOCOLS IN ADDITION TO IP, IN ADDITION TO THE INTERNET PROTOCOL INTO OUR SYSTEM. AND THESE OTHER PROTOCOLS HAD CONCEPTS LIKE ADDRESSES AND MTU AND ROUTING TABLES AND THE LIKE.

AND SO WE HAD TO HAVE SOME WAY OF DISTINGUISHING BETWEEN WHAT SORT OF ADDRESS ARE YOU TALKING ABOUT. AND THE DECISION THAT WE WENT WITH WAS TO PREFIX A LOT OF THESE COMMANDS WITH THE PROTOCOL THAT THEY BELONGED TO.

SO THERE'S IP ADDRESS HERE, AND YOU HAVE A DEC NET ADDRESS. XNS ADDRESS. WE BASICALLY, BY THE MIDDLE OF THE '90S, HAD ENDED UP WITH 14 DIFFERENT NETWORK PROTOCOLS IN THE BOX. WE HAD GONE FROM BEING JUST AN IP ROUTER TO BECOMING A MULTI PROTOCOL ROUTER.

Q. AND, AGAIN, AT THAT TIME, WHEN YOU WERE WORKING ON THE FIRST IP ROUTER, WAS THERE ANY KIND OF CONSTRAINT ON YOU OR FUNCTIONAL DEMAND THAT TOLD YOU, HEY, YOU'VE GOT TO DO IT THIS WAY?

A. THERE WEREN'T ANY OTHER DEVICES LIKE THIS AT THE TIME.

THERE WERE NOT ANY EXPECTATIONS THAT THE CUSTOMERS HAD, THAT THERE WAS A WAY OF DOING THIS OR THERE WAS A WAY OF TALKING ABOUT IT OR EVEN THE CHOICE OF WORDS.

WE COULD CERTAINLY, YOU KNOW, WE COULD CERTAINLY HAVE CHOSEN DIFFERENT WORDS TO DO THIS. WE COULD HAVE CHOSEN DIFFERENT ORDERS OF THESE WORDS TO DO THIS.

## DIRECT EXAMINATION OF MR. LOUGHEED BY MR. PAK

04:42PM 1 CISCO.

04:42PM 2 A. OKAY. I CAME UP WITH SOME OF THE FEW INITIAL KEY WORDS

04:42PM 3 SUCH AS SHOW, FOR STATUS COMMANDS.

04:42PM 4 AND AFTER I CAME UP WITH SORT OF THE INITIAL COMMAND SET,

04:43PM 5 VERY SMALL SET OF COMMANDS, WHAT I WOULD DO WHEN I HAD NEW

04:43PM 6 FUNCTIONALITY THAT I WAS CREATING WAS I WOULD LOOK TO SEE WHAT

04:43PM 7 I HAD DONE BEFORE, AND I NEEDED TO FIT IN WITH THAT. I NEEDED

04:43PM 8 TO BE SORT OF SOMETHING REASONABLE AND LOGICAL THERE. I DIDN'T

04:43PM 9 WANT TO HAVE -- IF THERE'S A RHYME AND A REASON TO THINGS,

04:43PM 10 PEOPLE WILL BE ABLE TO REMEMBER THEM MUCH EASIER.

04:43PM 11 SO I TOOK A LOOK AT WHAT I HAD DONE BEFORE. I BECAME VERY

04:43PM 12 AWARE THAT I WAS GOING TO BE -- THIS WAS GOING TO CONTINUE TO

04:43PM 13 EVOLVE. SO I WAS SORT OF TAKING MY BEST GUESS OF THE FUTURE AS

04:43PM 14 TO WHAT MIGHT FURTHER DEVELOP, AND I DIDN'T WANT TO CLOSE OFF

04:43PM 15 ANY AVENUES BY POOR CHOICE OF WORDS, OR THE LIKE.

04:43PM 16 I ALSO NEEDED TO COMMUNICATE TO NETWORK MANAGERS AND

04:43PM 17 SUPPORT PEOPLE SOME IDEAS. I MEAN, WHAT SORT OF MAKES SENSE TO

04:44PM 18 THAT AUDIENCE.

04:44PM 19 AND THEN THERE WAS MY OWN IDIOSYNCRATIC THINGS. CERTAIN

04:44PM 20 WORDS THAT APPEALED TO ME, CERTAIN WORDS THAT WERE SHORTER OR

04:44PM 21 LONGER. I LIKE WORDS THAT ARE SPELLED OUT. I DIDN'T PUT -- I

04:44PM 22 DON'T LIKE DOTS IN THE MIDDLE OF THINGS. I LIKE HYPHENS AND

04:44PM 23 NOT underscores, JUST LITTLE IDIOSYNCRATIC THINGS LIKE THAT.

04:44PM 24 AND THAT'S THE THOUGHT PROCESS THEY WENT THROUGH WHEN I WAS

04:44PM 25 CREATING COMMANDS IN THE EARLY DAYS.

08:15AM

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7 PLAINTIFF, ) SAN JOSE, CALIFORNIA  
VS. )  
8 ARISTA NETWORKS, INC., ) NOVEMBER 29, 2016  
9 )  
DEFENDANT ) VOLUME 4  
10 )  
 ) PAGES 534-819

11 TRANSCRIPT OF PROCEEDINGS  
12 BEFORE THE HONORABLE BETH LABSON FREEMAN  
UNITED STATES DISTRICT JUDGE

13 A P P E A R A N C E S:

14 FOR THE PLAINTIFF: DAVID A. NELSON  
15 QUINN EMANUEL URQUHART & SULLIVAN, LLP  
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17 FOR THE PLAINTIFF: QUINN, EMANUEL, URQUHART & SULLIVAN  
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DIRECT EXAMINATION OF MR. REMAKER BY MR. NELSON

01:37PM 1 TO MEMORIZE ALL OF THE COMMANDS. SO WE HAVE ONLINE HELP.

01:37PM 2 IF YOU TYPE QUESTION MARK AFTER A COMMAND, IT WILL SHOW YOU

01:37PM 3 ALL THE POSSIBLE CHILD COMMANDS THAT ARE ALLOWED AT THAT

01:37PM 4 PROMPT, INCLUDING THE INVENTORY COMMAND.

01:37PM 5 Q. AND THEN IN TERMS OF THE DESCRIPTION FOR THE INVENTORY

01:37PM 6 COMMAND ITSELF?

01:37PM 7 A. YES.

01:37PM 8 Q. WHAT WOULD THAT BE?

01:37PM 9 A. SO FOR EACH COMMAND THERE'S A BRIEF EXPLANATION, A BRIEF

01:37PM 10 SHORT HELP STRING, A HELP TEXT THAT TELLS PEOPLE WHAT TO DO.

01:38PM 11 WE WROTE THE HELP TEXT TO DESCRIBE WHAT THE SHOW INVENTORY

01:38PM 12 COMMAND DID. AND SPECIFICALLY WE SAID IT WAS TO SHOW THE

01:38PM 13 PHYSICAL INVENTORY OF THE BOX. THAT'S THE PARTS INSIDE THE

01:38PM 14 BOX.

01:38PM 15 Q. AND PHYSICAL INVENTORY IS TO DISTINGUISH IT FROM WHAT?

01:38PM 16 A. WELL, YOU MIGHT GET AN INVENTORY OF SOFTWARE LICENSES IN

01:38PM 17 THE BOX OR YOU MIGHT GET AN INVENTORY OF SOFTWARE MODULES ON

01:38PM 18 THE BOX. WE WANTED TO MAKE IT CLEAR WE WERE TALKING ABOUT

01:38PM 19 PHYSICAL THINGS THAT WERE, THAT WE ARE TAKING INVENTORY OF,

01:38PM 20 PHYSICAL HARDWARE.

01:38PM 21 Q. SO WHEN YOU WERE DEVELOPING THE HELP DESCRIPTION, WERE YOU

01:38PM 22 CONSTRAINED?

01:38PM 23 A. WE HAD NO CONSTRAINTS. THE AESTHETIC WAS TO KEEP IT SHORT,

01:38PM 24 BUT THERE ARE NO OFFICIAL CONSTRAINTS THAT I'M AWARE OF FOR THE

01:38PM 25 HELP TEXT ITSELF.

CROSS-EXAMINATION OF MR. REMAKER BY MR. FERRALL

02:06PM 1 EVIDENCE.)

02:06PM 2 BY MR. FERRALL:

02:06PM 3 Q. IF YOU TURN TO PAGE 37 OF THIS EXHIBIT 9014, DO YOU SEE

02:06PM 4 THERE'S A DEFINITION THERE OF DE FACTO STANDARD?

02:06PM 5 A. I SEE IT.

02:06PM 6 Q. IS THAT CONSISTENT WITH YOUR UNDERSTANDING OF DE FACTO

02:06PM 7 STANDARD?

02:06PM 8 A. SO IT SAYS A STANDARD BY USAGE RATHER THAN OFFICIAL DECREE;

02:06PM 9 A DEFAULT STANDARD.

02:06PM 10 SO THAT COULD BE ONE OF THE POSSIBLE DEFINITIONS FOR

02:06PM 11 DE FACTO STANDARD, YES.

02:06PM 12 Q. THAT'S A FAIR DEFINITION, RIGHT?

02:06PM 13 A. IT SEEMS REASONABLE.

02:06PM 14 Q. OKAY. SO GOING BACK TO EXHIBIT 5155 -- AND IF WE COULD SEE

02:07PM 15 THE PORTION WE WERE LOOKING AT.

02:07PM 16 ISN'T IT TRUE, MR. REMAKER, THAT AT THIS TIME IN 2004,

02:07PM 17 CISCO WAS HAPPY WITH ITS CLI COMMANDS BEING A DE FACTO INDUSTRY

02:07PM 18 STANDARD BECAUSE THAT ADVANCED YOUR CULTURE OF MAKING CUSTOMERS

02:07PM 19 SUCCESSFUL, RIGHT?

02:07PM 20 A. COULD YOU REPEAT THAT QUESTION, I'M SORRY.

02:07PM 21 Q. SURE.

02:07PM 22 CISCO WAS HAPPY WITH THE CLI COMMANDS BEING A DE FACTO

02:07PM 23 INDUSTRY STANDARD BECAUSE THAT WAS CONSISTENT WITH THE CULTURE

02:07PM 24 OF MAKING CUSTOMERS SUCCESSFUL?

02:07PM 25 A. YES, A CONSISTENT CLI MAKES OUR CUSTOMERS SUCCESSFUL.

DIRECT EXAMINATION OF MR. DUDA BY MR. PAK

04:11PM 1 THAT WERE COPIED FROM CISCO INTO ARISTA'S PRODUCTS; YOU  
04:11PM 2 UNDERSTAND THAT, CORRECT?  
04:11PM 3 A. SORRY, I DON'T QUITE KNOW WHAT YOU MEAN.  
04:12PM 4 Q. YOU UNDERSTAND THAT ARISTA COPIED SOME OF THE COMMANDS AT  
04:12PM 5 ISSUE IN THIS CASE FROM CISCO; YOU UNDERSTAND THAT, CORRECT?  
04:12PM 6 A. OUR COMMAND INTERPRETER RECOGNIZES MANY OF THE SAME  
04:12PM 7 COMMANDS, THAT'S RIGHT.  
04:12PM 8 Q. ARE YOU DENYING, SIR, THAT ARISTA COPIED CISCO'S CLI  
04:12PM 9 COMMANDS FROM CISCO SOURCES; ARE YOU DENYING THAT?  
04:12PM 10 A. COPIED FROM?  
04:12PM 11 Q. CISCO SOURCES?  
04:12PM 12 A. NO, I'M NOT.  
04:12PM 13 Q. YOU ARE NOT DENYING THAT, RIGHT?  
04:12PM 14 A. NO.  
04:12PM 15 Q. SO CISCO COPIED CLI COMMANDS AND SOME OUTPUTS FROM CISCO  
04:12PM 16 SOURCES INTO ARISTA PRODUCTS, CORRECT?  
04:12PM 17 A. WE DIDN'T COPY CISCO OUTPUTS INTO OUR CODE, NO, I DON'T  
04:12PM 18 THINK THAT'S ACCURATE.  
04:12PM 19 Q. LET ME FOCUS ON THE COMMANDS, WE WILL GET TO THE OUTPUTS  
04:12PM 20 LATER.  
04:12PM 21 ISN'T IT TRUE, SIR, THAT ARISTA COPIED SOME OF CISCO'S CLI  
04:12PM 22 COMMANDS FROM CISCO SOURCES AND PUT IT INTO ARISTA'S PRODUCTS?  
04:12PM 23 A. YES, THAT'S RIGHT.  
04:12PM 24 Q. THAT'S RIGHT.  
04:12PM 25 BUT NO ONE ELSE AT ARISTA HAS BEEN REPRIMANDED OR ASKED TO

DIRECT EXAMINATION OF MR. DUDA BY MR. PAK

04:13PM 1 LEAVE FOR THAT COPYING, CORRECT?

04:13PM 2 A. WE DON'T BELIEVE IT WAS WRONG.

04:13PM 3 Q. AND AGAIN, YOU DIDN'T RECEIVE ANY TRAINING ON INTELLECTUAL

04:13PM 4 PROPERTY PRIOR TO THIS LAWSUIT, CORRECT?

04:13PM 5 A. NO.

04:13PM 6 Q. OKAY.

04:13PM 7 AND YOU ADMIT, SIR, THAT IT'S NOT A COINCIDENCE THAT ARISTA

04:13PM 8 HAS SO MANY CLI COMMANDS THAT WERE TAKEN FROM CISCO'S

04:13PM 9 INTERFACE, THAT'S NOT A COINCIDENCE, IS IT, SIR?

04:13PM 10 A. NO, IT'S NOT.

04:13PM 11 Q. OKAY. IN FACT, YOU SAID ARISTA SLAVISHLY COPIED THE CISCO

04:13PM 12 CLI COMMANDS; ISN'T THAT TRUE? SIR?

04:13PM 13 A. NO, I DIDN'T SAY THAT.

04:13PM 14 Q. LET'S TAKE A LOOK AT PAGE 47 OF YOUR DEPOSITION, LINE 19

04:13PM 15 THROUGH 23.

04:14PM 16 MR. PAK: AND YOUR HONOR, MAY I PLAY THE VIDEO CLIP?

04:14PM 17 THE COURT: YES.

04:14PM 18 (WHEREUPON, A VIDEO DEPOSITION WAS PLAYED IN OPEN COURT.)

04:14PM 19 Q. THAT WAS YOUR SWORN TESTIMONY, SIR, RIGHT?

04:14PM 20 A. YES, BUT I WASN'T ACTUALLY TALKING ABOUT THE CISCO CLI IN

04:14PM 21 THE CASE.

04:14PM 22 Q. THAT WAS YOUR SWORN TESTIMONY, WASN'T IT, SIR?

04:14PM 23 A. IT IS.

04:14PM 24 Q. OKAY. AND DESPITE ALL THIS COPYING, NOBODY AT ARISTA EVER

04:14PM 25 APPROACHED CISCO FOR A LICENSE TO USE ANY OF CISCO'S CLI

## DIRECT EXAMINATION OF MR. DUDA BY MR. PAK

04:40PM 1 CONFIGUREABLE.

04:41PM 2 Q. WELL, YOU COULD REPLACE THEM WITH YOUR COMMANDS. YOU COULD

04:41PM 3 REPLACE THEM THE CISCO COMMAND WITH ARISTA'S OWN COMMANDS AND

04:41PM 4 YOUR PRODUCTS WOULD WORK JUST FINE; ISN'T THAT TRUE?

04:41PM 5 A. IT'S A LITTLE HYPOTHETICAL. I THINK WE WOULD HAVE TO COME

04:41PM 6 UP WITH AN ALTERNATIVE COMMAND LANGUAGE, BUT IT'S CERTAINLY

04:41PM 7 TECHNICALLY ACHIEVABLE.

04:41PM 8 Q. YOU CAN CERTAINLY REMOVE COMMANDS FROM YOUR PRODUCTS THAT

04:41PM 9 OVERLAP WITH CISCO'S CLI USER INTERFACE COMMANDS AS A TECHNICAL

04:41PM 10 MATTER; ISN'T THAT TRUE, SIR?

04:41PM 11 A. YES, YOU COULD REMOVE COMMANDS.

04:41PM 12 Q. AND IN FACT, YOU ACTUALLY HAVE AN INTERFACE CALLED

04:41PM 13 LINUX-INTERFACE THAT DOES NOT USE THE CISCO CLI COMMANDS; ISN'T

04:41PM 14 THAT TRUE?

04:41PM 15 A. THAT'S RIGHT.

04:41PM 16 Q. THAT'S CORRECT, RIGHT?

04:41PM 17 A. YES.

04:41PM 18 Q. AND YOU'VE SAID THAT YOU DON'T HAVE TO USE THE CLI IF YOU

04:41PM 19 DON'T WANT TO, THE NATIVE LINUX INTERFACES ARE ALL THERE AND

04:41PM 20 ABOUT 20 PERCENT OF OUR CUSTOMERS ADOPT A PURE LINUX APPROACH,

04:42PM 21 YOU'VE SAID THOSE THINGS, CORRECT?

04:42PM 22 A. I DID.

04:42PM 23 Q. YOU'VE HEARD A LOT ABOUT OPEN OR INDUSTRY STANDARD.

04:42PM 24 YOU'VE NEVER ASKED CISCO WHETHER CLI WAS AN OPEN STANDARD

04:42PM 25 THAT ANYONE CAN USE WITHOUT PERMISSION? YOU'VE NEVER ASKED

08:21AM

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

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CISCO SYSTEMS, INC., ) CV-14-5344-BLF  
)  
PLAINTIFF, ) SAN JOSE, CALIFORNIA  
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VS. ) NOVEMBER 30, 2016  
)  
ARISTA NETWORKS, INC., ) VOLUME 5  
)  
DEFENDANT ) PAGES 820-1114  
)

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TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE BETH LABSON FREEMAN  
UNITED STATES DISTRICT JUDGE

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A P P E A R A N C E S :

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FOR THE PLAINTIFF: DAVID A. NELSON  
QUINN EMANUEL URQUHART & SULLIVAN, LLP  
500 WEST MADISON STREET, SUITE 2450  
CHICAGO, IL 60661

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APPEARANCES CONTINUED ON NEXT PAGE

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OFFICIAL COURT REPORTER: SUMMER FISHER, CSR, CRR  
CERTIFICATE NUMBER 13185

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY  
TRANSCRIPT PRODUCED WITH COMPUTER

REDIRECT EXAMINATION OF MR. DUDA BY MR. PAK

09:43AM 1 Q. NOW I WANT TO GO BACK AND JUST ESTABLISH SOME FACTS. I  
09:43AM 2 THINK THERE WERE SOME QUESTIONS ABOUT E-MAILS, BUT I THINK IT'S  
09:43AM 3 UNDISPUTED NOW THAT ARISTA COPIED CLI COMMANDS FROM CISCO'S  
09:43AM 4 SOURCE CODE?  
09:43AM 5 A. THAT'S RIGHT.  
09:43AM 6 Q. WITH RESPECT TO SCREEN OUTPUTS, YOU WOULD AGREE WITH ME,  
09:43AM 7 SIR, THAT IF ANY OF CISCO'S SCREEN OUTPUTS CONTAIN EXPRESSIVE  
09:44AM 8 WORK, THEN ARISTA CANNOT USE THAT MATERIAL WITHOUT A LICENSE  
09:44AM 9 FROM CISCO; ISN'T THAT TRUE?  
09:44AM 10 MR. SILBERT: OBJECTION. CALLS FOR A LEGAL  
09:44AM 11 CONCLUSION.  
09:44AM 12 MR. PAK: THAT'S YOUR BELIEF, RIGHT?  
09:44AM 13 THE COURT: SUSTAINED.  
09:44AM 14 BY MR. PAK:  
09:44AM 15 Q. YOU TESTIFIED EARLIER THAT YOU HAD CERTAIN BELIEFS ABOUT  
09:44AM 16 WHAT YOU CAN DO PROPERLY AND WHAT YOU CANNOT DO PROPERLY WITH  
09:44AM 17 RESPECT TO CISCO'S COMMANDS; IS THAT TRUE?  
09:44AM 18 A. I BELIEVE SO.  
09:44AM 19 Q. OKAY. DO YOU BELIEVE ON BEHALF OF ARISTA THAT YOU CAN TAKE  
09:44AM 20 ANY OF THE SCREEN OUTPUTS FROM CISCO WITHOUT A LICENSE; IS THAT  
09:44AM 21 YOUR TESTIMONY?  
09:44AM 22 MR. SILBERT: SAME OBJECTION.  
09:44AM 23 THE COURT: SUSTAINED.  
09:44AM 24 BY MR. PAK:  
09:44AM 25 Q. DID YOU FORM ANY SUBJECTIVE BELIEFS ON BEHALF OF ARISTA

DIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

10:09AM 1 Q. AND THERE WAS E-MAILS GOING BACK AND FORTH AND HEALTHY  
10:09AM 2 DISCUSSION ABOUT WHAT THOSE THINGS SHOULD BE, CORRECT?  
10:09AM 3 A. YES.  
10:09AM 4 Q. AND THAT WENT ON DURING THE TIME THAT YOU WERE AT CISCO FOR  
10:09AM 5 THE CLI COMMAND DEVELOPMENT, RIGHT?  
10:09AM 6 A. YES.  
10:09AM 7 Q. NOW I WANT TO SWITCH GEARS A LITTLE BIT HERE. SO YOU'RE  
10:09AM 8 AWARE THAT MANY OF THE SENIOR OFFICERS AND FOUNDERS OF ARISTA  
10:09AM 9 CAME FROM CISCO, RIGHT?  
10:10AM 10 A. THAT'S CORRECT.  
10:10AM 11 Q. AND YOU KNOW THAT THERE ARE TIMES WHEN ARISTA HAS PUT  
10:10AM 12 FEATURES IN ITS PRODUCTS WHERE IT WAS EMULATING FEATURES THAT  
10:10AM 13 PRE-EXISTED IN CISCO PRODUCTS; ISN'T THAT RIGHT?  
10:10AM 14 A. THAT'S RIGHT.  
10:10AM 15 Q. NOW WHEN YOU CAME, LET ME JUST GO BACK IN TIME. YOU CAME  
10:10AM 16 IN 2007, WAS IT LIKE MID-2007?  
10:10AM 17 A. JULY, 2007.  
10:10AM 18 Q. JULY 2007 SO PRETTY MUCH RIGHT SMACK IN THE MIDDLE OF 2007.  
10:10AM 19 SO WHEN YOU CAME, ARISTA ACTUALLY HAD A SWITCH THAT WAS  
10:10AM 20 RUNNING, I BELIEVE YOU DESCRIBED THEM AS CISCO-LIKE CLI'S  
10:10AM 21 RIGHT?  
10:10AM 22 A. WE HAD A SWITCH THAT HAD A BASIC CLI, WE HAD VERY FEW  
10:10AM 23 FEATURES AT THAT TIME, BUT IT WAS UP AND RUNNING IN THE LAB.  
10:10AM 24 Q. IT WAS UP AND RUNNING, AND IN FACT IN SEPTEMBER OF 2007,  
10:10AM 25 YOU ACTUALLY SHIPPED ONE OF THOSE SWITCHES TO A MR. JEFF LAPIK

DIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

10:14AM 1 Q. WELL ENOUGH FEATURES SO THAT YOU SHIPPED ONE A COUPLE  
10:14AM 2 MONTHS LATER TO MR. LAPIK, I BELIEVE IT IS, AT UNIVERSITY OF  
10:14AM 3 NEW HAMPSHIRE, RIGHT?  
10:14AM 4 A. ENOUGH FEATURES TO TEST THE POWER, CORRECT.  
10:14AM 5 Q. SO THEN WE CAN SAY BY THAT TIME IT'S SOMEWHERE SOUTH FOR  
10:14AM 6 2007 SOME WERE SOUTH OF \$2.5 MILLION, RIGHT?  
10:14AM 7 A. YES.  
10:14AM 8 Q. MAYBE ABOUT HALF OF THAT?  
10:14AM 9 A. JULY IS MAJOR, SO YES.  
10:14AM 10 Q. SO THE TOTAL EXPENDITURE TO QUIET A SWITCH THAT HAD EOS AND  
10:14AM 11 WAS RUNNING IOS-LIKE CLI, WAS LESS THAN \$2 MILLION, RIGHT?  
10:14AM 12 A. YES, THAT'S CORRECT.  
10:14AM 13 Q. NOW YOU ARE AWARE THAT CISCO IN TERMS OF DEVELOPMENT ON ITS  
10:14AM 14 PRODUCTS SPENDS NORTH OF \$5 BILLION A YEAR ON RESEARCH AND  
10:15AM 15 DEVELOPMENT, RIGHT?  
10:15AM 16 A. IN TODAY'S TIME, THAT SOUNDS RIGHT.  
10:15AM 17 Q. NOW, SIR, I WOULD LIKE TO TALK TO YOU ABOUT A FEW OTHER  
10:15AM 18 THINGS HERE. SO IT'S TRUE THAT ARISTA INTENTIONALLY COPIED  
10:15AM 19 CISCO'S CLI, RIGHT?  
10:15AM 20 A. IT'S TRUE THAT WE USED THE SAME CLI FOR MANY OF OUR BASE OR  
10:15AM 21 CORE FEATURES.  
10:15AM 22 Q. AND INTENTIONALLY COPIED THAT, RIGHT?  
10:15AM 23 A. FOR THOSE CORE FEATURES, YES.  
10:15AM 24 Q. CORE FEATURES, IS THAT WHAT YOU SAID?  
10:15AM 25 A. THAT'S RIGHT.

DIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

10:15AM 1 Q. OKAY. AND YOU ACTUALLY TOLD, WHEN YOUR INTERACTIONS WITH  
10:15AM 2 CUSTOMERS, THAT YOUR CLI IS JUST LIKE CISCO'S CLI, RIGHT?  
10:15AM 3 A. IN THE EARLY DAYS, YES, THAT'S TRUE.  
10:15AM 4 Q. OKAY. AND YOU KNOW THAT OTHERS AT ARISTA HAVE SAID THE  
10:15AM 5 SAME THINGS TO CUSTOMERS, RIGHT?  
10:16AM 6 A. YES.  
10:16AM 7 Q. NOW I WANT TO TURN TO YOUR BINDER. IN EXHIBIT 197, THIS  
10:16AM 8 WAS ACTUALLY JUST MOVED INTO EVIDENCE. SO WE DON'T NEED TO DO  
10:16AM 9 THAT.  
10:16AM 10 SO IF YOU COULD JUST DISPLAY EXHIBIT 197 AGAIN, MR. FISHER.  
10:16AM 11 SO THIS IS AN E-MAIL, THE WHOLE EXHIBIT, AND YOU CAN GO  
10:16AM 12 FLIP THROUGH, WOULD BE AN E-MAIL STRING BETWEEN MR. DUDA,  
10:16AM 13 MR. SWEENEY, MR. HAFEEZ AND YOURSELF?  
10:16AM 14 A. THAT'S RIGHT.  
10:16AM 15 Q. NOW I JUST WANT TO ASK YOU A FEW QUESTIONS ABOUT THIS. SO  
10:16AM 16 IF WE CAN GO BACK, AND I THINK IN TIME, THESE KIND OF GO IN  
10:16AM 17 REVERSE ORDER MEANING THE OLDEST ONE IS AT THE BACK?  
10:17AM 18 A. THAT'S RIGHT.  
10:17AM 19 Q. SO LET'S KIND OF GO BACK THERE AND LOOK AT THE VERY LAST  
10:17AM 20 ONE. THIS STARTS, THE LAST PAGE WOULD BE PAGE 3 OF THAT.  
10:17AM 21 SO THAT'S AN E-MAIL FROM MR. SWEENEY TO YOURSELF, RIGHT?  
10:17AM 22 A. THAT'S RIGHT.  
10:17AM 23 Q. AND HE'S EXPRESSING, YOUR UNDERSTANDING, SOME OPINIONS ON  
10:17AM 24 CLI FUNCTIONALITY RELATED TO A FEATURE CALLED ACL, RIGHT?  
10:17AM 25 A. THAT'S CORRECT.

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DIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

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11:07AM 1 EVIDENCE, YOUR HONOR.

11:07AM 2 THE COURT: ANY OBJECTION?

11:07AM 3 MR. FERRALL: NO OBJECTION.

11:07AM 4 THE COURT: IT WILL BE ADMITTED.

11:07AM 5 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER 404, HAVING BEEN

11:07AM 6 PREVIOUSLY MARKED FOR IDENTIFICATION, WAS ADMITTED INTO

11:07AM 7 EVIDENCE.)

11:07AM 8 BY MR. NELSON:

11:07AM 9 Q. SO LET'S LOOK AT MIDDLE OF THE PAGE. SO MR. FOSS FIRST,

11:07AM 10 CAN YOU TELL US WHO MR. FOSS IS?

11:07AM 11 A. AT THAT TIME MARK FOSS WAS RESPONSIBLE FOR PARTNER OR

11:07AM 12 CHANNEL PROGRAMS AT ARISTA.

11:07AM 13 Q. PARTNER CHANNEL PROGRAMS?

11:07AM 14 A. CHANNEL PROGRAMS, YES.

11:07AM 15 Q. SO IF YOU LOOK AT THE MIDDLE OF THE E-MAIL THE ONE THAT'S

11:08AM 16 FROM MR. FOSS TO THE PEOPLE AT FACEBOOK.

11:08AM 17 DO YOU SEE THAT?

11:08AM 18 A. YES.

11:08AM 19 Q. IT SAYS, AS I MENTIONED TO DAN LAST NIGHT, THE CLI COMMANDS

11:08AM 20 IN OUR SWITCH ARE IDENTICAL TO CISCO IOS SO THERE SHOULD BE NO

11:08AM 21 LEARNING CURVE TO GET IT CONFIGURED.

11:08AM 22 DO YOU SEE THAT?

11:08AM 23 A. YES.

11:08AM 24 Q. SO THAT'S SOMETHING THAT ARISTA SALES ENGINEERS WERE OUT

11:08AM 25 TELLING CUSTOMERS IS A SELLING POINT OF THE ARISTA SWITCH,

DIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

11:08AM 1 CORRECT?

11:08AM 2 A. WE WERE SAYING THAT TO CUSTOMERS, YES.

11:08AM 3 Q. RIGHT. WE'RE IDENTICAL TO CISCO IOS SO YOU WON'T HAVE ANY

11:08AM 4 LEARNING CURVE TO USE OUR PRODUCT, CORRECT?

11:08AM 5 A. THAT'S RIGHT.

11:08AM 6 Q. SO EXHIBIT 379, AND LET ME KNOW WHEN YOU ARE THERE. ARE

11:09AM 7 YOU THERE, SIR?

11:09AM 8 A. YES.

11:09AM 9 Q. SO THE TOP E-MAIL IS FROM MR. ADAM SWEENEY TO MR. SUNEEL

11:09AM 10 VENATI, DID I GET THAT NAME RIGHT?

11:09AM 11 A. THAT'S RIGHT.

11:09AM 12 Q. AND YOU ARE ONE OF THE COPIES ON THAT E-MAIL, CORRECT?

11:09AM 13 A. CORRECT.

11:09AM 14 Q. AND THE SUBJECT OF THAT IS QOS, CLI; IS THAT RIGHT?

11:09AM 15 A. THAT'S RIGHT.

11:09AM 16 Q. AND QS, THAT STANDS FOR QUALITY OF SERVICE?

11:09AM 17 A. YES.

11:09AM 18 Q. NOW, THAT TOP LEVEL E-MAIL ATTACHES ANOTHER E-MAIL FROM

11:09AM 19 MR. VENATI; IS THAT RIGHT? IN OTHER WORDS IF YOU FOLLOW THE

11:09AM 20 STRING DOWN YOU WILL SEE ANOTHER E-MAIL FROM MR. VENATI DATED

11:09AM 21 MONDAY PRINCIPAL 18TH 2011?

11:09AM 22 A. YES.

11:09AM 23 Q. AND THE --

11:10AM 24 MR. NELSON: WELL AT THIS POINT, YOUR HONOR, I MOVE

11:10AM 25 INTO EVIDENCE EXHIBIT 379.

CROSS-EXAMINATION OF MR. SADANA BY MR. FERRALL

11:20AM 1 Q. OKAY. AND IF WE COULD LOOK AT THE FRONT PAGE OF THIS  
11:20AM 2 EXHIBIT, AND IF WE COULD JUST BLOW UP THE HEADER WITH THE  
11:20AM 3 SUBJECT LINE.

11:20AM 4 CAN YOU TELL ME WHAT THE SUBJECT OF THIS E-MAIL EXCHANGE  
11:20AM 5 IS? IN SIMPLE TERMS, IF POSSIBLE, PLEASE.

11:20AM 6 A. SURE. THIS IS A REQUEST FOR A FEATURE ENHANCEMENT, RFEE  
11:21AM 7 BY SOMEONE IN THIS E-MAIL CHAIN REQUESTING AN MQC OR MODULAR  
11:21AM 8 QOS-LIKE CLI.

11:21AM 9 Q. OKAY. AND NOW I WOULD LIKE YOU TO TURN TO EXHIBIT 379. IF  
11:21AM 10 WE COULD CALL THAT UP, AND IN PARTICULAR HIGHLIGHT THE BOTTOM  
11:21AM 11 PART, THE MESSAGE DATED 2:20 A.M.

11:21AM 12 A. MR. SUNEEL WORKS IN THE BANGALORE OFFICE.

11:21AM 13 Q. SO THIS -- CAN YOU TELL ME WHAT THE SUBJECT, AGAIN, IN  
11:21AM 14 SIMPLE TERMS, IF POSSIBLE, WHAT THE SUBJECT OF THIS  
11:21AM 15 CONVERSATION WAS?

11:22AM 16 A. MR. SUNEEL WAS IMPLEMENTING OUR QOS FEATURES AT THAT POINT,  
11:22AM 17 AND HE WAS ASKING FOR INPUT ON WHAT CLI TO USE, WHETHER TO USE  
11:22AM 18 SIMPLE CLI OR MODULAR QOS CLI.

11:22AM 19 Q. AND WHAT DID ARISTA END UP USING, DID IT USE THE CISCO MQC  
11:22AM 20 KIND?

11:22AM 21 A. NO, WE DID NOT IMPLEMENT THE MQC CLI, WE STAYED WITH THE  
11:22AM 22 SIMPLE CLI.

11:22AM 23 Q. AND IN YOUR MIND, WERE THERE ANY COPYRIGHT ISSUES WITH THE  
11:22AM 24 SIMPLE CLI OR THE CLI THAT ARISTA IMPLEMENTED?

11:22AM 25 A. NO, WE BELIEVED THIS WAS THE INDUSTRY STANDARD, EVERYONE

CROSS-EXAMINATION OF MR. SADANA BY MR. FERRALL

11:22AM 1 WAS USING IT, WE WERE USING THE SAME CLI.

11:22AM 2 Q. LET'S TURN NEXT TO EXHIBIT 197. AND YOU RECALL MR. NELSON

11:23AM 3 ASKED YOU QUITE A FEW QUESTIONS ABOUT THIS EXHIBIT?

11:23AM 4 A. YES.

11:23AM 5 Q. AND I THINK YOU SAID IN YOUR TESTIMONY, YOU REFERRED TO

11:23AM 6 SOMETHING CALLED ACLS; IS THAT RIGHT?

11:23AM 7 A. THAT'S RIGHT.

11:23AM 8 Q. AND IN PARTICULAR, ACL CONFIGURATION, I THINK?

11:23AM 9 A. YES.

11:23AM 10 Q. WE WON'T NEED TO GO INTO THE DETAILS OF WHAT THOSE ARE, BUT

11:23AM 11 CAN YOU TELL THE JURY WHAT THE OUTCOME WAS OF THIS DISCUSSION

11:23AM 12 REGARDING THE ACL CONFIGURATION THAT ARISTA WOULD USE?

11:23AM 13 A. RIGHT. THIS E-MAIL CHAIN WAS ONLY PART OF THE DISCUSSION.

11:23AM 14 WE WERE A SMALL COMPANY, SO WE HAD A MEETING TO GO OVER WHAT

11:23AM 15 CLI TO USE.

11:23AM 16 AND AT THAT POINT, JUNIPER ACTUALLY HAD A BETTER WAY OF

11:23AM 17 CONFIGURING ACL A FEATURE CALLED ACL COMMIT. SO THAT IF YOU

11:24AM 18 ARE MAKING CHANGES TO THE NETWORK, YOU CANNOT OPEN A SECURITY

11:24AM 19 HOLE WHILE YOU ARE MAKING THE CHANGE.

11:24AM 20 AND THEN AFTER THAT DISCUSSION, WE ACTUALLY ENDED UP DOING

11:24AM 21 WHAT JUNIPER HAD ALREADY IMPLEMENTED AND WHAT WAS ORIGINALLY

11:24AM 22 ASKED FROM EOS. WE ACTUALLY DID NOT END UP WITH CISCO CLI FOR

11:24AM 23 THAT FUNCTIONALITY.

11:24AM 24 Q. AND HOW, IN YOUR VIEW, WAS THAT IMPLEMENTATION DIFFERENT

11:24AM 25 FROM CISCO IN TERMS OF ITS PERFORMANCE FOR THE USER?

DIRECT EXAMINATION OF MR. DALE BY MR. PAK

02:23PM 1 COME UP WITH A PARTICULAR COMMAND EXPRESSION FOR A  
02:23PM 2 FUNCTIONALITY AND THAT WOULD BE HIS OR HER PREFERENCE FOR THAT,  
02:23PM 3 CORRECT?

02:23PM 4 A. I GUESS SO.

02:23PM 5 Q. OKAY. AND YOU KNOW FROM YOUR EXPERIENCE THAT DIFFERENT  
02:23PM 6 ENGINEERS CAN HAVE DIFFERENT OPINIONS ON HOW TO EXPRESS CERTAIN  
02:23PM 7 COMMANDS, CORRECT?

02:23PM 8 A. SURE.

02:23PM 9 Q. AND YOU'VE HAD YOUR OPINIONS AND OTHER PEOPLE HAD THEIR  
02:23PM 10 DIFFERENT OPINIONS ON HOW TO EXPRESS A PARTICULAR COMMAND  
02:23PM 11 EXPRESSION WHILE YOU WERE EMPLOYED BY CISCO; IS THAT RIGHT?

02:23PM 12 A. THAT'S RIGHT.

02:23PM 13 Q. AND WHEN YOU WERE HAVING THESE DIFFERENT OPINIONS, THOSE  
02:23PM 14 WERE YOUR PERSONAL OPINIONS AND PREFERENCES FOR HOW A CLI  
02:23PM 15 COMMAND EXPRESSION SHOULD BE EXPRESSED, AND YOU EXPRESSED THOSE  
02:23PM 16 OPINIONS TO YOUR COLLEAGUES AT CISCO, CORRECT?

02:23PM 17 A. I PROBABLY DID, YEAH.

02:23PM 18 Q. AND YOU WOULD AGREE WITH ME THAT TWO ENGINEERS COULD SIT  
02:23PM 19 DOWN AND PROPOSE TWO VERY DIFFERENT COMMANDS FOR ANY PARTICULAR  
02:24PM 20 FUNCTION, CORRECT?

02:24PM 21 A. SURE.

02:24PM 22 Q. FOR EXAMPLE IT'S POSSIBLE FOR AN ENGINEER TO SIT DOWN AND  
02:24PM 23 PICK THE WORD DISPLAY INSTEAD OF THE WORD SHOW FOR THE EXACT  
02:24PM 24 SAME FUNCTIONALITY, IS THAT TRUE?

02:24PM 25 A. IT'S POSSIBLE. IT'S UNLIKELY, BUT IT'S POSSIBLE.

DIRECT EXAMINATION OF MR. DALE BY MR. PAK

02:25PM 1 ENGINEERS, THAT'S ONE OF THE DESIGN OBJECTIVES, CORRECT?

02:25PM 2 A. SURE.

02:25PM 3 Q. OKAY. BUT SETTING ASIDE, YOU ARE NO LONGER WORKING AT

02:25PM 4 CISCO, IF YOU WERE WORKING AT ANY COMPANY, YOU COULD CHOOSE ANY

02:25PM 5 WORD FOR ANY COMMAND; IS THAT TRUE?

02:25PM 6 A. SURE, OKAY.

02:25PM 7 Q. IT'S JUST A WORD CHOICE, CORRECT?

02:25PM 8 A. UH-HUH.

02:25PM 9 Q. THAT'S SUBJECTIVE, RIGHT?

02:25PM 10 A. IT IS SUBJECTIVE BUT I THINK THERE'S MANY FACTORS THAT GO

02:25PM 11 INTO DECIDING COMMANDS THEMSELVES.

02:25PM 12 Q. BUT ULTIMATELY, SIR, THAT'S A PROFESSIONAL JUDGMENT CALL BY

02:25PM 13 AN ENGINEER; ISN'T THAT TRUE?

02:25PM 14 A. SURE.

02:25PM 15 Q. NOW I WANT TO SWITCH GEARS AND TALK ABOUT YOUR TENURE AT

02:25PM 16 ARISTA.

02:26PM 17 SO YOU LEAVE CISCO, NOW YOU ARE AT ARISTA, AND PART OF YOUR

02:26PM 18 JOB RESPONSIBILITY WAS TALK TO ARISTA CUSTOMERS ABOUT ARISTA'S

02:26PM 19 PRODUCTS, CORRECT?

02:26PM 20 A. THAT'S CORRECT.

02:26PM 21 Q. AND I BELIEVE -- WHAT WAS YOUR TITLE AT ARISTA?

02:26PM 22 A. I FORGOT WHAT MY INITIAL TITLE WAS, BUT AT ARISTA MY FINAL

02:26PM 23 TITLE WAS DISTINGUISHED ENGINEER AS WELL.

02:26PM 24 Q. OKAY. SO THAT'S A COMPARABLE TITLE AT ARISTA COMPARED TO

02:26PM 25 THE TITLE YOU HELD AT CISCO; IS THAT CORRECT?

DIRECT EXAMINATION OF MR. DALE BY MR. PAK

02:26PM 1 A. THAT'S CORRECT.

02:26PM 2 Q. AND AGAIN, THAT WOULD BE AN ENGINEER OF DISTINCTION AT

02:26PM 3 ARISTA, CORRECT?

02:26PM 4 A. I GUESS SO.

02:26PM 5 Q. WHEN YOU WERE AT ARISTA, YOU POINTED OUT TO POTENTIAL

02:26PM 6 CUSTOMERS THAT ARISTA'S USER INTERFACE IS JUST LIKE CISCO'S;

02:26PM 7 ISN'T THAT TRUE?

02:26PM 8 A. SURE, YEAH.

02:26PM 9 Q. YOU SAID THAT TO MANY CUSTOMERS, DIDN'T YOU?

02:26PM 10 A. IT'S LIKELY I DID.

02:26PM 11 Q. OKAY. AND YOU ALSO TOLD THOSE SAME CUSTOMERS THAT THEY CAN

02:27PM 12 SAVE RE-TRAINING COSTS AND THEY CAN EASILY ADOPT ARISTA'S

02:27PM 13 NETWORKING EQUIPMENT BECAUSE IT HAS THE SAME USER INTERFACE AS

02:27PM 14 CISCO'S, ISN'T THAT RIGHT?

02:27PM 15 A. THAT'S CORRECT.

02:27PM 16 Q. AND TAKE A LOOK AT, SIR, EXHIBIT 176 IN YOUR BINDER.

02:27PM 17 THIS WAS AN E-MAIL THAT WAS SENT FROM MR. DAVID MCLEOD, TO

02:27PM 18 YOU, MR. DALE, ON OCTOBER 9TH, 2012, WHILE YOU WERE EMPLOYED AT

02:27PM 19 ARISTA NETWORKS, CORRECT?

02:27PM 20 A. THAT'S CORRECT.

02:27PM 21 MR. PAK: YOUR HONOR, I WOULD LIKE TO MOVE

02:27PM 22 EXHIBIT 176 INTO EVIDENCE.

02:27PM 23 MR. SILBERT: NO OBJECTION.

02:27PM 24 THE COURT: IT WILL BE ADMITTED.

02:27PM 25

DIRECT EXAMINATION OF MR. DALE BY MR. PAK

02:27PM 1 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER 176, HAVING BEEN  
02:27PM 2 PREVIOUSLY MARKED FOR IDENTIFICATION, WAS ADMITTED INTO  
02:27PM 3 EVIDENCE.)  
02:27PM 4 BY MR. PAK:  
02:27PM 5 Q. SO LET'S TAKE A LOOK AT THE PAGE, THE SECOND PAGE, WHICH  
02:27PM 6 HAS THE BATES NUMBER 803, AND WHO WAS MR. MCLEOD AT ARISTA?  
02:28PM 7 A. SO DAVID, PER HIS TITLE HERE, WAS SALES SOUTHERN REGION  
02:28PM 8 AUSTRALIA, NEW ZEALAND.  
02:28PM 9 Q. OKAY. AND YOU WORKED REGULARLY WITH MR. MCLEOD, CORRECT?  
02:28PM 10 A. I DID, YES.  
02:28PM 11 Q. AND BOTH OF YOU WERE TRYING TO SELL ARISTA EQUIPMENT TO  
02:28PM 12 POTENTIAL CUSTOMERS, CORRECT?  
02:28PM 13 A. THAT'S CORRECT.  
02:28PM 14 Q. SO LET'S TAKE A LOOK AT THE TOP PARAGRAPH. WHAT MR. MCLEOD  
02:28PM 15 WROTE IS, IN A QUICK SUMMARY OF OUR VALUE/DIFFERENTIATION, IF  
02:28PM 16 YOU ARE LOOKING TO SIMPLIFY OUR NETWORK DESIGN, FUTURE PROOF  
02:28PM 17 FOR NEW SERVICES AND REDUCE CAPEX/OPEX OUR SOLUTIONS CAN HELP  
02:28PM 18 IN A STORAGE CLOUD ENVIRONMENT.  
02:28PM 19 AND CAPEX/OPEX, THOSE ARE EXPENDITURES, CAPITAL  
02:29PM 20 EXPENDITURE, OPERATIONAL EXPENDITURE; IS THAT RIGHT?  
02:29PM 21 A. I THINK THAT'S FAIR.  
02:29PM 22 Q. AND WHAT HE SAYS NEXT IS, ADD IN A CLI IDENTICAL TO CISCO  
02:29PM 23 IOS AND WE MAKE IT SIMPLE TO TRANSITION OPERATIONALLY.  
02:29PM 24 THAT WAS CONSISTENT WITH YOUR UNDERSTANDING OF ARISTA'S  
02:29PM 25 MARKETING PITCH, CORRECT?

DIRECT EXAMINATION OF MR. DALE BY MR. PAK

- 02:29PM 1 A. TYPICALLY, I DON'T THINK MARKETING INVOLVED TALKING ABOUT
- 02:29PM 2 THE COMMAND LINE, IT GENERALLY WASN'T A MAIN SELLING POINT.
- 02:29PM 3 THAT SAID, FOR SOME CUSTOMERS, WHO MIGHT HAVE BEEN TRAINED
- 02:29PM 4 ON OTHER DEVICES, IT MIGHT HAVE BEEN IMPORTANT.
- 02:29PM 5 Q. YOU DON'T DISPUTE THAT ARISTA PEOPLE TALKED TO CUSTOMERS
- 02:29PM 6 AND SAID THESE VERY SAME THINGS, ADD IN A CLI IDENTICAL TO
- 02:29PM 7 CISCO IOS AND WE IT MAKE IT SIMPLE TO TRANSITION EXISTING CISCO
- 02:29PM 8 CUSTOMERS TO ARISTA CUSTOMERS, CORRECT?
- 02:29PM 9 A. SURE.
- 02:29PM 10 Q. YOU SAID THOSE THINGS, CORRECT?
- 02:29PM 11 A. I DON'T KNOW IF I USED THOSE EXACT WORDS, BUT SURE.
- 02:29PM 12 Q. OKAY. AND YOU KNOW OTHER PEOPLE AT ARISTA USED SIMILAR
- 02:30PM 13 WORDS TO CONVEY THE SAME MESSAGE, CORRECT?
- 02:30PM 14 A. YES, IT'S POSSIBLE.
- 02:30PM 15 Q. AND AS WE DISCUSSED EARLIER, PART OF YOUR JOB AT ARISTA WAS
- 02:30PM 16 TO GIVE THESE PRESENTATIONS TO INDUSTRY CONFERENCES ABOUT
- 02:30PM 17 ARISTA'S PRODUCTS, CORRECT?
- 02:30PM 18 A. THAT'S CORRECT.
- 02:30PM 19 Q. AND WHEN YOU PRESENTED AT INDUSTRY CONFERENCES TALKING
- 02:30PM 20 ABOUT ARISTA PRODUCTS AS A DISTINGUISHED ENGINEER, YOU KNEW IT
- 02:30PM 21 WAS IMPORTANT TO MAKE SURE THAT YOU WERE PRESENTING ACCURATELY,
- 02:30PM 22 CORRECT?
- 02:30PM 23 A. I LIKE TO BE ACCURATE, YES.
- 02:30PM 24 Q. YOU KNOW IT WAS IMPORTANT, CORRECT?
- 02:30PM 25 A. SURE.

DIRECT EXAMINATION OF MR. DALE BY MR. PAK

02:34PM 1 MR. PAK: NO, WE ARE STARTING FROM 21 MINUTES INTO  
02:34PM 2 THE VIDEO.

02:34PM 3 THE COURT: WE CAN LISTEN TO 21 MINUTES, I JUST  
02:34PM 4 WANTED TO KNOW IF I HEARD YOU RIGHT.

02:34PM 5 MR. PAK: I WOULDN'T DO THAT TO US.

02:34PM 6 (WHEREUPON, A VIDEO WAS PLAYED IN OPEN COURT.)

02:34PM 7 Q. I WANT TO GO BACK AND PLAY IT ONE MORE TIME, MR. FISHER.

02:34PM 8 AND THEN MR. FISHER, IF WE COULD BACK UP THERE AND IF YOU  
02:34PM 9 COULD PAUSE AT THE LAST FRAME.

02:35PM 10 I WANT TO ASK MR. -- SO AGAIN, MR. DALE, THAT WAS YOU?

02:35PM 11 A. IT'S ME.

02:35PM 12 Q. OKAY. AND AT THE TOP IT SAYS EOS INDUSTRY STANDARD CLI,  
02:35PM 13 CORRECT?

02:35PM 14 A. THAT'S RIGHT.

02:35PM 15 Q. AND THEN ON THE LEFT-HAND SIDE IT SAYS, COMMON CLI TOOLS  
02:35PM 16 AND WHAT YOU WROTE IN THIS INDUSTRY PRESENTATION IS ARISTA'S  
02:35PM 17 CLI COMMANDS, SAME AS CISCO IOS, THAT'S WHAT YOU WROTE AND  
02:35PM 18 PRESENTED, CORRECT?

02:35PM 19 A. THAT'S WHAT'S IN THAT SLIDE.

02:35PM 20 Q. AND IF YOU LOOK CAREFULLY SIR AT THE SCREEN, YOU WILL SEE  
02:35PM 21 THAT THERE'S A SCREEN OUTPUT; IS THAT CORRECT?

02:35PM 22 A. THAT'S RIGHT.

02:35PM 23 Q. AND WHAT YOU ARE ACTUALLY SHOWING IS A SCREEN SNAPSHOT OF  
02:35PM 24 AN ARISTA SWITCH RUNNING SOME COMMANDS AND SCREEN OUTPUTS FROM  
02:35PM 25 THAT SWITCH; IS THAT CORRECT?

DIRECT EXAMINATION OF MR. DALE BY MR. PAK

02:39PM 1 FOR EXAMPLE, THAT WOULD BE AT SLIDE -- THE BATES NUMBER 773, IF  
02:39PM 2 YOU LOOK AT THE TOP OF THAT IN YOUR BINDER YOU WILL SEE LINCOLN  
02:39PM 3 DALE MACBOOK. DO YOU SEE THAT ENTRY?

02:39PM 4 A. YEAH, I'M NOT SURE WHAT THE QUESTION IS.

02:39PM 5 Q. IS THIS A DOCUMENT THAT CAME FROM YOUR FILES?

02:39PM 6 A. IT LOOKS LIKE IT COULD, SURE.

02:39PM 7 MR. PAK: AND YOUR HONOR, AT THIS POINT I DON'T THINK  
02:39PM 8 THERE'S AN OBJECTION. I WOULD LIKE TO MOVE THIS DOCUMENT INTO  
02:39PM 9 EVIDENCE AS WELL.

02:39PM 10 MR. SILBERT: NO OBJECTION.

02:39PM 11 THE COURT: IT WILL BE ADMITTED.

02:39PM 12 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER 169, HAVING BEEN  
02:39PM 13 PREVIOUSLY MARKED FOR IDENTIFICATION, WAS ADMITTED INTO  
02:39PM 14 EVIDENCE.)

02:39PM 15 BY MR. PAK:

02:39PM 16 Q. SO IF WE TAKE A LOOK AT THIS DOCUMENT, IT'S A SIMILAR  
02:39PM 17 DOCUMENT, IT'S GOT ARISTA REINVENTING DATA CENTER SWITCHING.

02:39PM 18 IF WE JUMP TO THE PAGE ENDING IN 773. THIS IS INTERESTING,  
02:39PM 19 SO THIS DOCUMENT THAT YOU ALSO CREATED HAS EOS AT THE TOP, BUT  
02:39PM 20 INSTEAD OF INDUSTRY STANDARD CLI IT SAYS OPERATIONAL CLI,  
02:40PM 21 DOESN'T IT?

02:40PM 22 A. IT DOES.

02:40PM 23 Q. AND ON THE BOTTOM AT THE LEFT-HAND SIDE IT SAYS ARISTA CLI  
02:40PM 24 COMMANDS SAME AS CISCO IOS, CORRECT?

02:40PM 25 A. IT DOES, YES.

DIRECT EXAMINATION OF MR. DALE BY MR. PAK

02:45PM 1 Q. AND HERE YOU RIGHT, HI ARIFF, THAT SOUNDS LIKE AN EXCUSE TO  
02:45PM 2 ME. AMAZON USES JUNIPER'S NET CONF AND ARE HAPPY WITH THAT.

02:45PM 3 BUT ON THE CISCO N7K'S, THAT FRONT END, THE JUNIPER MPLS SIDE  
02:46PM 4 OF THINGS, THEY USE CLI OVER SSH, EXPECT AND THAT IS THE PLACE  
02:46PM 5 IN THE NETWORK THAT IT WOULD BE APPLICABLE TO, NOT THE MPLS  
02:46PM 6 JUNIPER SIDE, CORRECT?

02:46PM 7 A. SURE, YEAH.

02:46PM 8 Q. SO WHAT YOU WERE TALKING ABOUT HERE IS A SALES OPPORTUNITY  
02:46PM 9 TO AMAZON; IS THAT CORRECT?

02:46PM 10 A. YEAH.

02:46PM 11 Q. OKAY. WHAT YOU WERE SAYING IS THAT AMAZON USES SOME  
02:46PM 12 JUNIPER ROUTER EQUIPMENT ON THE BACK END, CORRECT?

02:46PM 13 A. YEP.

02:46PM 14 Q. BUT WHAT AMAZON WAS USING WAS CISCO NEXUS 7000 PRODUCTS ON  
02:46PM 15 THE FRONT END, CORRECT?

02:46PM 16 A. THAT'S CORRECT.

02:46PM 17 Q. SO YOU WERE POINTING OUT THAT WE WERE COMPETING FOR THE  
02:46PM 18 OPPORTUNITY TO REPLACE CISCO ON THE FRONT END, CORRECT?

02:46PM 19 A. YEAH.

02:46PM 20 Q. AND WHAT YOU SAID IS, "WE WOULD BE A PRACTICAL DROP-IN  
02:46PM 21 REPLACEMENT FOR THE CISCO, GIVEN THE 99.999 PERCENT SIMILARITY  
02:47PM 22 IN THE CLI."

02:47PM 23 THAT'S WHAT YOU WROTE, CORRECT?

02:47PM 24 A. THAT'S WHAT I WROTE.

02:47PM 25 MR. PAK: AT THIS POINT, YOUR HONOR, I WOULD LIKE TO

CROSS-EXAMINATION OF MR. DALE BY MR. SILBERT

02:49PM 1 Q. HAVING WORKED IN THE INDUSTRY FOR MORE THAN 14 YEARS BY THE  
02:49PM 2 TIME THAT YOU JOINED ARISTA, DID YOU FEEL THAT YOU NEEDED ANY  
02:49PM 3 TRAINING ON HOW TO HANDLE ONE COMPANY'S CONFIDENTIAL  
02:49PM 4 INFORMATION?  
02:49PM 5 A. NOT AT ALL, IT'S VERY, VERY STRAIGHTFORWARD.  
02:49PM 6 Q. DURING YOUR TIME AT ARISTA, DID YOU TRY TO PRESERVE THE  
02:49PM 7 CONFIDENTIALITY OF THE ANY INFORMATION YOU MIGHT HAVE KNOWN  
02:50PM 8 FROM CISCO OR ANY OTHER SOURCE THAT WASN'T ARISTA?  
02:50PM 9 A. ABSOLUTELY, YEAH.  
02:50PM 10 Q. LET'S TALK ABOUT THE TERM INDUSTRY STANDARD THAT MR. PAK  
02:50PM 11 DISCUSSED WITH YOU.  
02:50PM 12 WHEN DID YOU FIRST HEAR THAT TERM USED TO DESCRIBE THE CLI  
02:50PM 13 OF AN ETHERNET SWITCH  
02:50PM 14 A. IT WOULD HAVE BEEN IN MY TIME AT CISCO.  
02:50PM 15 Q. AND IN WHAT CONTEXT AT CISCO DID YOU HEAR -- LET'S BACK UP.  
02:50PM 16 WHO WAS IT THAT YOU HEARD DURING YOUR YEARS AT CISCO, USE THE  
02:50PM 17 TERM INDUSTRY STANDARD TO DESCRIBE AN ETHERNET SWITCH CLI?  
02:50PM 18 A. I THINK I EVEN WROTE IN DOCUMENTS MYSELF THAT USED THAT  
02:50PM 19 TERMINOLOGY.  
02:50PM 20 Q. WHILE YOU WERE A CISCO EMPLOYEE?  
02:50PM 21 A. WHILE I WAS AT CISCO, YEAH.  
02:50PM 22 Q. AND DID YOU ALSO HEAR OTHERS AT CISCO USE THE TERM INDUSTRY  
02:50PM 23 STANDARD TO REFER TO A CISCO CLI FOR AN ETHERNET SWITCH?  
02:50PM 24 A. YEAH.  
02:51PM 25 Q. AND WHEN YOU USED THE TERM INDUSTRY STANDARD WITH RESPECT

CROSS-EXAMINATION OF MR. DALE BY MR. SILBERT

02:51PM 1 TO THE CLI, WHAT DID YOU MEAN BY IT?

02:51PM 2 A. IT'S A STANDARD THAT EVERYONE IN THE INDUSTRY UNDERSTANDS.

02:51PM 3 Q. OKAY. WHILE YOU WERE AT CISCO, DID YOU KNOW THAT OTHER

02:51PM 4 SWITCH VENDORS HAD CLI'S THAT WERE SIMILAR TO CISCO'S?

02:51PM 5 A. I DID, YES.

02:51PM 6 Q. HOW DID YOU LEARN THAT FACT?

02:51PM 7 A. CERTAINLY TALKING TO CUSTOMERS, TALKING TO ENGINEERS.

02:51PM 8 USING DEVICES WHEN DOING TESTING FOR INTEROPERABILITY.

02:51PM 9 Q. DURING THE 14 OR SO YEARS THAT YOU WERE AT CISCO, DID

02:51PM 10 ANYONE EVER SUGGEST TO YOU THAT THERE WAS ANYTHING IMPROPER

02:51PM 11 ABOUT OTHER SWITCH VENDORS HAVING CLI'S THAT WERE SIMILAR TO

02:51PM 12 CISCO'S CLI?

02:51PM 13 A. NOT TO MY KNOWLEDGE, NO.

02:51PM 14 Q. DURING THE SEVERAL YEARS THAT YOU WERE AT ARISTA BEFORE

02:52PM 15 THIS LAWSUIT WAS FILED, DID ANYONE EVER SUGGEST TO YOU THAT

02:52PM 16 THERE WAS ANYTHING IMPROPER ABOUT ANOTHER SWITCH VENDOR USING

02:52PM 17 THE SAME CLI COMMANDS THAT CISCO USED?

02:52PM 18 A. NO, I DON'T BELIEVE SO.

02:52PM 19 Q. WHILE YOU WERE WORKING AT ARISTA, DID YOU THINK THAT HAVING

02:52PM 20 ARISTA SWITCHES RECOGNIZE THE SAME CLI COMMANDS THAT CISCO

02:52PM 21 SWITCHES RECOGNIZE WAS SOMETHING YOU HAD TO HIDE IN ANY WAY?

02:52PM 22 A. NOT AT ALL, NO.

02:52PM 23 Q. DID YOU TRY TO HIDE THAT FACT?

02:52PM 24 A. I DON'T THINK WE DID.

02:52PM 25 Q. OKAY. LET'S TALK ABOUT THE PRESENTATION THAT THE VIDEO WAS

12:20:04

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
3 SAN JOSE DIVISION

4  
5 CISCO SYSTEMS, INC., ) CV-14-5344-BLF  
6 )  
7 PLAINTIFF, ) SAN JOSE, CALIFORNIA  
VS. ) )  
8 ARISTA NETWORKS, INC., ) DECEMBER 1, 2016  
9 )  
DEFENDANT ) VOLUME 6  
10 )  
 ) PAGES 1115-1309  
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11 TRANSCRIPT OF PROCEEDINGS  
12 BEFORE THE HONORABLE BETH LABSON FREEMAN  
13 UNITED STATES DISTRICT JUDGE

14 A P P E A R A N C E S:

15 FOR THE PLAINTIFF: QUINN, EMANUEL, URQUHART & SULLIVAN  
16 BY: DAVID A. NELSON  
500 WEST MADISON STREET, SUITE 2450  
CHICAGO, IL 60661

17 FOR THE PLAINTIFF:

18 BY: SEAN PAK  
50 CALIFORNIA STREET, 22ND FLOOR  
SAN FRANCISCO, CALIFORNIA 94111

22 APPEARANCES CONTINUED ON NEXT PAGE

23 OFFICIAL COURT REPORTER: SUMMER FISHER, CSR, CRR  
24 CERTIFICATE NUMBER 13185

25 PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY  
TRANSCRIPT PRODUCED WITH COMPUTER

03:16:22 1 PRONOUNCE THE LETTERS, IT'S NOT A REAL WORD.

03:16:25 2 BUT IT'S VERY COMMON FOR ENGINEERS TO TALK ABOUT ACL'S.

03:16:31 3 AFTER A WHILE, THEY USE ENOUGH OF THESE, IT STARTS TO SOUND

03:16:35 4 LIKE A FOREIGN LANGUAGE, BUT IT DOES MAKE SENSE TO THE

03:16:37 5 ENGINEERS WHO SEE THESE COMMANDS.

03:16:39 6 Q. AND ACL, WHAT DOES THAT STAND FOR?

03:16:42 7 A. ACCESS CONTROL LISTS, ACL.

03:16:44 8 Q. NOW IF WE MOVE FORWARD, IN TERMS OF YOUR ANALYSIS, DID YOU

03:16:51 9 DECIDE WHETHER THE ARRANGEMENT PLAYS INTO THE CREATIVITY PART?

03:16:54 10 A. I DO. OR I DID. AND IT DOES PLAY A ROLE.

03:17:03 11 IN FACT, IF YOU REMEMBER TO JUST TWO MINUTES AGO WHERE I

03:17:07 12 TALKED ABOUT THE PARSER-POLICE MANIFESTO THAT BOX NUMBER ONE

03:17:11 13 WAS ABOUT EXTENSIBLE. AND PART OF THAT HAS TO DO WITH THE WORD

03:17:15 14 ORDER THAT YOU CAN USE.

03:17:16 15 AND SO YOU CAN USE SOMETHING LIKE SHOW IP ACCESS LISTS,

03:17:22 16 AGAIN IS OUR EXAMPLE. AND REALLY YOU CAN ORGANIZE THOSE IN ANY

03:17:26 17 WAY.

03:17:27 18 AND ONE ENGINEER MIGHT SAY THE EMPHASIS HERE IS ON

03:17:30 19 DISPLAYING INFORMATION. ANOTHER ONE MIGHT SAY, WELL THE

03:17:33 20 EMPHASIS REALLY IS ON ACCESS LISTS, SOY I COULD CREATE A

03:17:38 21 HIERARCHY CALLED ACCESS LISTS, I COULD IDENTIFY WHAT THE

03:17:42 22 PROTOCOL IS NEXT, IP OR OTHER KINDS OF ACCESS LISTS, AND THEN A

03:17:46 23 VERB TO SHOW WHAT THE CONFIGURATION IS, CONFIG TO CONFIGURE

03:17:52 24 THEM.

03:17:53 25 SO THE WORD CHOICE AND THE ORDERING HERE IS SOMETHING

03:17:56 1 THAT'S A -- I'M SORRY, THE WORD ORDER IS A CREATIVE ENDEAVOR.

03:18:00 2 Q. SO THEN IN TERMS OF THE ARRANGEMENT OF THE WORDS, HOW DOES

03:18:05 3 THAT PLAY INTO THE ORGANIZATION OF THESE MULTIWORD COMMANDS?

03:18:09 4 A. SURE. ON THIS DEMONSTRATIVE, IT'S BACK TO THE

03:18:12 5 REPRESENTATION OF SHOW IP ACCESS LISTS BECAUSE "SHOW" IS FIRST,

03:18:20 6 IT GOES INTO THE "SHOW HIERARCHY."

03:18:24 7 THE NEXT DEMONSTRATIVE SHOWS YOU COULD HAVE ACTUALLY PUT

03:18:26 8 IT INTO A DIFFERENT HIERARCHY. YOU COULD HAVE PUT IT INTO THE

03:18:30 9 IP HIERARCHY SO THEN THE COMMAND WOULD BE IP SHOW ACCESS LIST.

03:18:34 10 EITHER WOULD BE POSSIBLE. EITHER WOULD BE AN OPTION.

03:18:37 11 THERE'S NO CONSTRAINT OR LIMITATION THAT IT'S ONE VERSUS THE

03:18:40 12 OTHER.

03:18:41 13 AND SO THE FACT THAT WE HAVE IT NOW, WAS BASED ON A

03:18:47 14 CREATIVE CHOICE BY THE ENGINEER WHO DEVELOPED IT AT THAT TIME.

03:18:52 15 Q. NOW BASED UPON YOUR REVIEW IN THIS CASE, DID YOU BECOME

03:18:55 16 FAMILIAR WITH SOME OF THE CONSIDERATIONS FOR DECIDING TO

03:18:59 17 STRUCTURE A COMMAND ONE WAY VERSUS ANOTHER WAY?

03:19:02 18 A. YES.

03:19:02 19 Q. AND CAN YOU EXPLAIN TO US WHAT THAT IS?

03:19:05 20 A. SURE.

03:19:06 21 SO FIRST OF ALL, THERE ARE LOTS OF DIFFERENT

03:19:08 22 CONSIDERATIONS AND SOME PEOPLE WILL CONSIDER DIFFERENT

03:19:12 23 CONSIDERATIONS DIFFERENTLY.

03:19:14 24 I THINK THE ONE THAT I'VE HIGHLIGHTED SO FAR IS THE USE OF

03:19:18 25 THE HYPHEN, SOME PEOPLE SAY IT'S GOOD, SOME PEOPLE SAY IT'S

03:19:21 1 BAD. THE MANIFESTO SAID NOT TO USE HYPHENS.

03:19:29 2 BUT IF YOU GO BACK TO SLIDE 11, FOR EXAMPLE, THE FIGURE

03:19:35 3 THAT DISPLAYED ALL THE COMMANDS, THE 506 AT ISSUE, THERE'S LOTS

03:19:40 4 OF COMMANDS THAT HAVE HYPHENS.

03:19:42 5 SO IN SOME INSTANCES IT'S A DESIGN CONSIDERATION WHETHER

03:19:45 6 TOO USE A HYPHEN OR NOT. IT'S A CONSIDERATION WHETHER TO USE

03:19:50 7 ONE WORD VERSUS ANOTHER OR NOT.

03:19:52 8 IN SOME CASES THE RECOMMENDATIONS AS DESCRIBED IN THE

03:19:57 9 MANIFESTO ARE ADHERED TO, SOMETIMES THERE'S EXCEPTIONS, BUT

03:20:03 10 ULTIMATELY WHAT YOU HOPE TO HAVE IS A CONSISTENT MEMORABLE

03:20:07 11 COMMAND-LINE INTERFACE INSTEAD OF MULTIWORD COMMANDS.

03:20:11 12 Q. IF WE COULD GO TO SLIDE 26, MR. FISHER.

03:20:15 13 SO NOW I WANT TO TALK ABOUT THE COMMAND OUTPUTS THAT YOU

03:20:19 14 DESCRIBED A BIT AGO AND TALK ABOUT YOUR ANALYSIS OF THE CREDIT

03:20:24 15 ACTIVITY THERE, OKAY.

03:20:25 16 A. CERTAINLY.

03:20:27 17 Q. SO WHAT DID YOU DO TO DO THAT ANALYSIS?

03:20:31 18 A. SO FOR THE SCREEN OUTPUTS, WHAT I WAS ABLE TO DO WAS ALSO

03:20:35 19 LOOK AT THE USER MANUALS, LOOK AT THE SAME KINDS OF E-MAIL

03:20:38 20 EXCHANGES WHERE THERE WERE DISCUSSIONS ABOUT WHAT SOME OF THE

03:20:43 21 OUTPUTS SHOULD BE, THE SAME KINDS OF MATERIALS THAT I HAD

03:20:48 22 DISCUSSED PREVIOUSLY THAT I HAD CONSIDERED AS PART OF THIS

03:20:50 23 QUESTION.

03:20:51 24 Q. AND SO YOU TALKED ABOUT THIS EXAMPLE BEFORE WHERE YOU TYPE

03:20:57 25 IN A COMMAND AND THEN YOU GET AN OUTPUT BACK.

03:21:00 1 CAN YOU EXPLAIN TO US WHAT YOU BELIEVE TO BE THE  
03:21:06 2 CREATIVITY IN THE OUTPUT?

03:21:08 3 A. SURE. THE CREATIVITY HERE, IF YOU CAN SEE THE WORDS ON  
03:21:13 4 THE SCREEN HERE, THERE REALLY IS A LOT OF VARIABILITY IN HOW  
03:21:19 5 YOU CAN ORGANIZE THIS INFORMATION. THIS IS FOR THE COMMAND  
03:21:23 6 "SHOW SPANNING-TREE," AND IT PROVIDES SOME INFORMATION ABOUT  
03:21:28 7 WHAT PROTOCOL IS ENABLED.

03:21:31 8 AND THEN THERE ARE DIFFERENT FIELDS, AND THEN AFTER THE  
03:21:33 9 FIELDS ARE INFORMATION ABOUT THE STATUS OF THE ROUTER.

03:21:37 10 NOW THE FIELDS THEMSELVES AND THE NAMES OF THE FIELDS  
03:21:41 11 DON'T CHANGE FROM ONE INSTANCE TO THE NEXT IF YOU WERE  
03:21:51 12 EXECUTING THESE COMMANDS ON AN OPERATING ROUTER, BUT THE VALUES  
03:21:54 13 THAT GO INTO THOSE FIELDS.

03:21:56 14 NOW IN AND INSTANCE THE VALUES HAVE THE SAME UNITS. IT  
03:22:00 15 MIGHT MEGABITS PER SECOND IN THE COUNTER OF PACKETS THAT WERE  
03:22:03 16 LOST.

03:22:03 17 SO ALL OF THE INFORMATION THAT'S DISPLAYED CAN BE REALLY  
03:22:06 18 ORGANIZED IN ANY FASHION. YOU COULD DO IT IN TABLES, YOU COULD  
03:22:09 19 DO IT IN LINES. THERE REALLY IS A LOT OF CREATIVITY INVOLVED  
03:22:13 20 IN DECIDING AND ORGANIZING THE INFORMATION HERE.

03:22:18 21 Q. NOW IN CONNECTION WITH YOUR ANALYSIS OF THE OUTPUTS, DID  
03:22:21 22 YOU DETERMINE WHETHER THERE WERE ANY SIGNIFICANT CONSTRAINTS ON  
03:22:25 23 HOW YOU COULD CONSTRUCT THESE OUTPUTS?

03:22:27 24 A. I DID. AND THERE REALLY AREN'T. YOU CAN INCLUDE ANY  
03:22:33 25 INFORMATION, YOU CAN ORGANIZE IT IN ANY WAY.

03:22:37 1 THERE MIGHT BE CONSTRAINTS LIKE YOU HAVE TO USE ENGLISH OR  
03:22:41 2 SOMETHING LIKE THAT, BUT THAT'S NOT REALLY A SIGNIFICANT  
03:22:44 3 CONSTRAINT THAT IMPINGES ON THE ABILITY OF THE PERSON DESIGNING  
03:22:49 4 THIS OUTPUT TO EXERCISE CREATIVITY IN WHAT THOSE CHOICES MIGHT  
03:22:57 5 BE.

03:22:57 6 Q. NOW I WANT TO GO FORWARD TO THE HELP DESCRIPTIONS. YOU  
03:23:00 7 DESCRIBED THOSE FOR US.

03:23:02 8 WHAT DID YOU DO IN CONNECTION WITH YOUR ANALYSIS OF THE  
03:23:07 9 HELP DESCRIPTIONS AND THE CREATIVITY THERE.

03:23:10 10 A. THE ANALYSIS AGAIN, WAS VERY SIMILAR, I CAN LOOK AT THE  
03:23:14 11 USER MANUALS.

03:23:15 12 I CAN LOOK AT THE SWITCHES THEMSELVES IN SOME INSTANCES.  
03:23:21 13 AND I CAN LOOK AT THE HELP DESCRIPTIONS THAT ARE EXPECTED TO BE  
03:23:24 14 PRODUCED ON THE SWITCHES WHEN THEY'RE RUNNING THE OPERATING  
03:23:29 15 SYSTEM.

03:23:30 16 AND SO THERE'S AN ANIMATION HERE THAT SHOWS FOR THE  
03:23:33 17 COMMAND "SNMP-SERVER HOST VERSION?" AND THEN IT RETURNS THE  
03:23:40 18 RESPONSE, "SNMP VERSION TO USE FOR NOTIFICATION MESSAGES."  
03:23:46 19 AND MY UNDERSTANDING OF THE PROCESS BY WHICH THOSE ARE  
03:23:50 20 CREATED IS CREATIVE. THERE AREN'T REALLY CONSTRAINTS ON WHAT  
03:23:56 21 THE USER OR THE PERSON DESIGNING THOSE COMMANDS IS ALLOWED TO  
03:24:00 22 INCLUDE IN TERMS OF THE HELP INFORMATION.

03:24:03 23 Q. NOW I WANT TO MOVE FORWARD TO THE NEXT ELEMENT OF THE USER  
03:24:10 24 INTERFACE THAT YOU DESCRIBED WHICH IS THE MODES AND PROMPTS AND  
03:24:14 25 THE ARRANGEMENT OF THE MODES AND PROMPTS?

03:24:16 1 A. YES.

03:24:17 2 Q. WHAT DID YOU DO IN CONNECTION WITH YOUR ANALYSIS OF THE

03:24:20 3 CREATIVITY THERE?

03:24:20 4 A. IT'S A SIMILAR KIND OF METHODOLOGY. I LOOKED AT WHAT THE

03:24:25 5 DOCUMENTS WOULD SAY ABOUT MODES AND PROMPTS AND ALSO WHAT THE

03:24:30 6 DOCUMENTS SAY ABOUT THE PROCESS BY WHICH THESE WERE DESIGNED.

03:24:35 7 I REVIEWED DEPOSITION TESTIMONY. I BELIEVE MR. LOUGHEED

03:24:38 8 TESTIFIED ABOUT THIS ON MONDAY.

03:24:43 9 AND SO THE IDEA THAT YOU HAVE THE EXECUTIVE, THE EXEC

03:24:50 10 INTERFACE AND THEN THE PRIVILEGE AND THEN THE GLOBAL

03:24:53 11 CONFIGURATION AND THEN THE INTERFACE CONFIGURATION MODES AND

03:24:57 12 THEN THE CORRESPONDING PROMPTS, THERE'S OTHER WAYS THAT THAT

03:25:01 13 COULD HAVE BEEN ORGANIZED, OTHER NAMES THAT COULD HAVE BEEN

03:25:05 14 USED, AND SO IT'S CLEAR THAT THERE WAS A CREATIVE PROCESS IN

03:25:12 15 THE MODES AND PROMPTS AS WELL.

03:25:13 16 Q. IN CONNECTION WITH YOUR ANALYSIS OF THE CASE, HAD YOU SEEN

03:25:19 17 ANYTHING TO INDICATE THAT SOMEBODY ELSE BEFORE CISCO HAD THE

03:25:21 18 ARRANGEMENT THAT YOU JUST DESCRIBED OF MODES AND PROMPTS?

03:25:25 19 A. NO, NOT THOSE FOUR MODES AND PROMPTS THAT ARE AT ISSUE

03:25:28 20 HERE.

03:25:29 21 Q. NOW JUST SO I UNDERSTAND, SO IS IT POSSIBLE, CAN YOU JUST

03:25:35 22 JUMP FROM THE TOP LEVEL MODE ALL THE WAY DOWN TO THE INTERFACE

03:25:43 23 MODE?

03:25:43 24 A. NO AS PART OF THE STRUCTURE OF THE MODES AND PROMPTS, THEY

03:25:45 25 ARE NESTED, MEANING YOU HAVE TO BE IN THE FIRST MODE, THE EXEC

03:25:52 1 MODE, AND FROM THERE YOU CAN ONLY GET TO THE PRIVILEGED MODE.

03:25:56 2 THEN ONCE YOU ARE IN THE PRIVILEGED MODE, YOU HAVE TO GO

03:25:58 3 TO THE GLOBAL CONFIGURATION AND THEN TO THE INTERFACE

03:26:01 4 CONFIGURATION MODE.

03:26:01 5 SO THEY ARE NESTED THAT WAY. AND THAT WAS A CREATIVE

03:26:06 6 DECISION. THEY DIDN'T HAVE TO BE NESTED, YOU COULD GO TO ANY

03:26:10 7 MODE AS AN ALTERNATIVE.

03:26:11 8 AND SO THAT WAS SOMETHING THAT WAS DESIGNED AND SPECIFIED

03:26:15 9 THAT WAY ON PURPOSE.

03:26:17 10 Q. NOW, I WANT TO GO FORWARD TO SLIDE 29, PLEASE, AND TALK

03:26:27 11 ABOUT THE USER MANUALS; DO YOU SEE THAT?

03:26:29 12 A. YES.

03:26:30 13 Q. NOW, IN YOUR -- WHAT DID YOU DO FOR YOUR ANALYSIS OF THE

03:26:35 14 POTENTIAL CREATIVITY OF THE USER MANUALS?

03:26:36 15 A. HERE AGAIN, I RELIED ON SIMILAR KINDS OF INFORMATION.

03:26:41 16 CLEARLY WHEN YOU HAVE A MULTI HUNDRED PAGE MANUAL THAT'S

03:26:44 17 ESSENTIALLY LIKE A BOOK, THERE'S ALL SORTS OF WAYS IN WHICH THE

03:26:48 18 INFORMATION CAN BE ORGANIZED WITHIN THAT MANUAL, WHAT THE

03:26:53 19 INFORMATION SAYS EXACTLY, THE WORD CHOICES THAT ARE USED TO

03:26:57 20 DESCRIBE ASPECTS OF THE SWITCH OR ROUTER.

03:27:01 21 IT REALLY IS ON PAR WITH A BOOK. AND YOUR ABILITY TO PUT

03:27:08 22 INTO INFORMATION IN THAT MANUAL THAT YOU WANT.

03:27:10 23 Q. SO THEN IN TERMS OF THE FOUR ELEMENTS OF THE USER

03:27:14 24 INTERFACE, LET'S TAKE THAT, THOSE FIRST. DID YOU REACH ANY

03:27:18 25 CONCLUSION AS TO THE ORIGINALITY AND CREATIVITY OF THOSE

03:27:23 1 ELEMENTS?

03:27:23 2 A. YES. FOR THE USER INTERFACE, THAT INCLUDED THE FOUR

03:27:27 3 COMPONENTS, THE MULTIWORD COMMANDS, THE OUTPUTS, THE HELP

03:27:32 4 DESCRIPTIONS, THE MODES AND PROMPTS, AND THAT WAS THE USER

03:27:36 5 INTERFACE FOR EACH OF IOS, IOS XR, IOS XE, AND NX-OS, I HAD

03:27:43 6 FOUND THAT THERE WAS CREATIVITY IN THE WAY THAT ALL FOUR OF

03:27:49 7 THOSE COMPONENTS WERE DETERMINED.

03:27:51 8 Q. AND DID YOU ANALYZE, IN TERMS OF WHAT WE JUST WALKED

03:27:55 9 THROUGH IN DESCRIBING YOUR ANALYSIS, DID YOU DO THAT FOR EACH

03:27:58 10 OF THE USER INTERFACES AT ISSUE IN THIS CASE?

03:28:00 11 A. YES, I DID.

03:28:02 12 Q. AND THEN WITH RESPECT TO THE USER DOCUMENTATION, THE

03:28:07 13 MANUALS THAT ARE AT ISSUE THEMSELVES, DID YOU REACH A

03:28:10 14 CONCLUSION ABOUT THE ORIGINALITY AND CREATIVITY THERE?

03:28:13 15 A. YES, I DID.

03:28:14 16 FOR THE USER MANUALS THAT HAVE BEEN IDENTIFIED, I ALSO

03:28:18 17 DETERMINED THAT THEY WERE -- THE PROCESS BY WHICH THEY WERE

03:28:25 18 DEVELOPED WAS A CREATIVE PROCESS AND THAT ULTIMATELY THE

03:28:31 19 PRODUCTS THEMSELVES WERE CREATED.

03:28:33 20 Q. AND WAS THAT TRUE WITH RESPECT TO ALL THE MANUALS THAT YOU

03:28:35 21 LOOKED AT?

03:28:36 22 A. YES, IT IS.

03:28:37 23 Q. NOW, I WANT TO GO FORWARD TO SLIDE 32, MR. FISHER. THANK

03:28:45 24 YOU, SIR.

03:28:46 25 SO LET'S TALK ABOUT WHAT YOU DESCRIBED AS THE SECOND

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
3 SAN JOSE DIVISION

4  
5 CISCO SYSTEMS, INC., ) CV-14-5344-BLF  
6 )  
7 PLAINTIFF, ) SAN JOSE, CALIFORNIA  
VS. ) )  
8 ARISTA NETWORKS, INC., ) DECEMBER 2, 2016  
9 ) )  
DEFENDANT ) VOLUME 7  
10 ) )  
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TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE BETH LABSON FREEMAN  
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFF: QUINN, EMANUEL, URQUHART & SULLIVAN  
BY: DAVID A. NELSON  
500 WEST MADISON STREET, SUITE 2450  
CHICAGO, IL 60661

FOR THE PLAINTIFF: QUINN, EMANUEL, URQUHART & SULLIVAN  
BY: SEAN PAK  
50 CALIFORNIA STREET, 22ND FLOOR  
SAN FRANCISCO, CALIFORNIA 94111

APPEARANCES CONTINUED ON NEXT PAGE

OFFICIAL COURT REPORTER: SUMMER FISHER, CSR, CRR  
CERTIFICATE NUMBER 13185

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY  
TRANSCRIPT PRODUCED WITH COMPUTER

11:02:35 1 THE COURT: WELL, I'M GOING TO HOLD HIM TO HIS REPORT

11:02:37 2 AT THAT LEVEL. OKAY. THE OBJECTION IS OVERRULED.

11:02:58 3 (SIDEBAR CONFERENCE CONCLUDED.)

11:02:58 4 MR. NELSON: MAY I PROCEED, YOUR HONOR?

11:03:01 5 THE COURT: YES, YOU MAY.

11:03:02 6 BY MR. NELSON:

11:03:03 7 Q. SO, DR. ALMEROOTH, I'M TALKING ABOUT THESE IOS XR HELP

11:03:06 8 DESCRIPTIONS, FOR -- YOU ANALYZED OTHER VERSIONS OF EOS IN THIS

11:03:10 9 CASE; RIGHT?

11:03:10 10 A. I DID.

11:03:11 11 Q. AND DID YOU CONFIRM THAT THE OPERATION WAS SUBSTANTIALLY

11:03:15 12 THE SAME, IF NOT IDENTICAL, WITH RESPECT TO THOSE OTHER

11:03:18 13 VERSIONS?

11:03:18 14 A. THAT'S CORRECT.

11:03:19 15 Q. AND DID DR. BLACK HAVE A REBUTTAL REPORT AND ATTEMPT TO --

11:03:25 16 OR EXCUSE ME, OPPORTUNITY IS THE WORD I WAS LOOKING FOR TO

11:03:33 17 RESPOND TO YOUR ALLEGATIONS REGARDING THE HELP DESCRIPTIONS?

11:03:35 18 A. HE DID HAVE AN OPPORTUNITY.

11:03:36 19 Q. DID HE EVER SAY THAT YOUR STATEMENT ABOUT THE OPERATION

11:03:39 20 BEING THE SAME IN OTHER VERSIONS WAS WRONG?

11:03:43 21 A. NO, HE DID NOT.

11:03:44 22 Q. OKAY. THANK YOU.

11:03:46 23 SO NOW I WOULD LIKE TO TURN TO ANOTHER EXHIBIT THAT WE

11:03:51 24 TALKED ABOUT YESTERDAY. THE FIRST ONE BEING EXHIBIT 4822.

11:04:03 25 A. I HAVE IT HERE.

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
3 SAN JOSE DIVISION

4  
5 CISCO SYSTEMS, INC., ) CV-14-5344-BLF  
6 )  
7 PLAINTIFF, ) SAN JOSE, CALIFORNIA  
VS. ) )  
8 ARISTA NETWORKS, INC., ) DECEMBER 5, 2016  
9 ) )  
DEFENDANT ) VOLUME 8  
10 ) )  
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TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE BETH LABSON FREEMAN  
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFF: QUINN, EMANUEL, URQUHART & SULLIVAN  
BY: DAVID A. NELSON  
500 WEST MADISON STREET, SUITE 2450  
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FOR THE PLAINTIFF: QUINN, EMANUEL, URQUHART & SULLIVAN  
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APPEARANCES CONTINUED ON NEXT PAGE

OFFICIAL COURT REPORTER: SUMMER FISHER, CSR, CRR  
CERTIFICATE NUMBER 13185

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY  
TRANSCRIPT PRODUCED WITH COMPUTER

01:39:34 1 YOUR HONOR.

01:39:35 2 THE COURT: ANY OBJECTION?

01:39:36 3 MR. DESMARAIS: NO, YOUR HONOR.

01:39:37 4 THE COURT: OKAY. IT WILL BE ADMITTED.

01:39:38 5 (DEFENDANT'S EXHIBIT 5454 WAS ADMITTED INTO EVIDENCE.)

01:39:38 6 BY MR. VAN NEST:

01:39:39 7 Q. OKAY. LET'S TAKE A LOOK AT THIS. THIS IS ANOTHER DATA

01:39:41 8 SHEET THAT CISCO PUBLISHED IN 2012; RIGHT?

01:39:46 9 A. THAT IS CORRECT.

01:39:47 10 Q. AND THE NX-OS NETWORKING SOFTWARE, THAT'S THE SOFTWARE

01:39:50 11 THAT RUNS INSIDE THE NEXUS PRODUCTS YOU TALKED ABOUT THIS

01:39:54 12 MORNING, CORRECT?

01:39:55 13 A. YES, IT IS, IT'S ONE OF THEM.

01:39:57 14 Q. OKAY. AND COULD WE HIGHLIGHT THERE THE SECOND MIDDLE

01:40:00 15 COLUMN DOWN NEAR THE BOTTOM.

01:40:03 16 THIS ONE SAYS, "FURTHERMORE, CISCO NX-OS OFFERS THE SAME

01:40:08 17 INDUSTRY STANDARD COMMAND LINE ENVIRONMENT THAT WAS PIONEERED

01:40:12 18 IN CISCO IOS SOFTWARE MAKING THE TRANSITION FROM CISCO IOS

01:40:17 19 SOFTWARE TO CISCO NX-OS SOFTWARE EASY."

01:40:20 20 THAT'S WHAT IT SAYS, CORRECT?

01:40:21 21 A. THAT'S WHAT IT SAYS.

01:40:22 22 Q. AND IT USES THAT SAME PHRASE WE SAW BEFORE, INDUSTRY

01:40:27 23 STANDARD COMMAND LINE ENVIRONMENT; RIGHT?

01:40:28 24 A. YES, IT DOES.

01:40:29 25 Q. AND THERE ARE DOZENS AND DOZENS OF THESE DATA SHEETS THAT

02:39:23 1 WE WILL MARK IT, YOUR HONOR, AS DEMONSTRATIVE 9075, AND

02:39:27 2 MR. SILBERT CAN WRITE THAT ON THERE.

02:39:29 3 THE COURT: THANK YOU.

02:39:30 4 (DEFENDANT'S EXHIBIT 9075 WAS MARKED FOR IDENTIFICATION.)

02:39:32 5 **CROSS-EXAMINATION**

02:39:32 6 BY MR. PAK:

02:39:51 7 Q. GOOD TO SEE YOU AGAIN, MR. DUDA.

02:39:52 8 A. GOOD TO SEE YOU.

02:39:53 9 Q. NOW FIRST OF ALL, YOU STILL STAND BY ALL OF THE TESTIMONY

02:39:56 10 THAT YOU HAVE GIVEN IN THIS TRIAL, CORRECT?

02:39:59 11 A. YES, OF COURSE.

02:40:00 12 Q. AND YOU STILL STAND BY YOUR TESTIMONY THAT ARISTA COPIED

02:40:04 13 SOME OF CISCO'S CLI COMMANDS FROM CISCO'S SOURCES AND PUT IT

02:40:09 14 INTO ARISTA PRODUCTS, CORRECT?

02:40:10 15 A. THAT'S RIGHT.

02:40:11 16 Q. AND YOU STILL STAND BY YOUR TESTIMONY THAT ARISTA DECIDED

02:40:15 17 TO EMBRACE CISCO IOS CLI AS THE MODEL FOR ARISTA'S CLI, TRUE?

02:40:22 18 A. THAT'S RIGHT.

02:40:23 19 Q. AND ISN'T IT ALSO TRUE THAT WHEN IT CAME TO COPYING

02:40:27 20 CISCO'S CLI AND PUTTING IT INTO ARISTA SWITCHES, YOU AND OTHERS

02:40:32 21 AT ARISTA MADE THE DECISION NOT TO INNOVATE; ISN'T THAT TRUE?

02:40:35 22 A. WELL, WE DIDN'T COPY THE WHOLE CLI OR ANYTHING CLOSE. AND

02:40:40 23 WE INNOVATED IN MANY WAYS IN OUR CLI.

02:40:43 24 Q. ISN'T IT TRUE, SIR, THAT YOU HAVE SAID IN DOCUMENTS, THAT

02:40:48 25 WHEN IT CAME TO COPYING CISCO'S CLI, THERE IS NO NEED TO

03:45:53 1 Q. AND THEN FOR THE DELL SWITCH, AT LEAST FOR THE  
03:45:57 2 POWERCONNECT 8024 IT SAYS, NOT CONSISTENT WITH IOS; RIGHT?  
03:46:01 3 A. YES.  
03:46:02 4 Q. SO JUST A FEW MORE QUESTIONS FOR YOU, SIR.  
03:46:06 5 SO YOU CAN PUT 6095 ASIDE. SO YOU ARE NOT AWARE OF ANY  
03:46:21 6 ANALYSIS AT ARISTA OF OTHER EQUIPMENT VENDORS AND HOW OFTEN  
03:46:25 7 THEY USE ANY PARTICULAR CLI COMMAND; ISN'T THAT RIGHT?  
03:46:28 8 A. NO, I'M NOT AWARE.  
03:46:30 9 Q. AND YOU WERE THE FIFTH EMPLOYEE, I THINK YOU SAID AT  
03:46:33 10 ARISTA; IS THAT RIGHT?  
03:46:35 11 A. SOMETHING LIKE THAT.  
03:46:36 12 Q. OKAY. SO I WANT TO TALK TO YOU A BIT ABOUT THE STANDARDS.  
03:46:43 13 YOU TALKED ABOUT THE ITEF; DO YOU RECALL THAT?  
03:46:47 14 A. CORRECT.  
03:46:47 15 Q. AND YOU HAD, YOU SHOWED US AN EXAMPLE OF AN RFC THAT YOU  
03:46:51 16 SUBMITTED; RIGHT?  
03:46:52 17 A. YES.  
03:46:53 18 Q. AND THE ITEF, THAT GENERALLY CONCERNS LIKE PROTOCOLS AND  
03:46:57 19 THINGS LIKE THAT; RIGHT?  
03:47:02 20 A. AMONG OTHER THINGS, YES.  
03:47:03 21 Q. IN OTHER WORDS HOW THE DATA MIGHT BE FORMATTED TO PASS IT  
03:47:06 22 BACK AND FORTH BETWEEN EQUIPMENT, THINGS LIKE THAT?  
03:47:09 23 A. THINGS LIKE THAT.  
03:47:10 24 Q. BUT YOU'RE NOT AWARE OF ANY STANDARDS SETTING ORGANIZATION  
03:47:14 25 THAT HAS STANDARDIZED WHAT A COMMAND-LINE INTERFACE WOULD BE;

03:47:20 1 RIGHT?

03:47:20 2 A. NO, I'M NOT.

03:47:21 3 Q. AND THIS ITEF, OF WHICH YOU ARE A MEMBER I TAKE IT; RIGHT?

03:47:28 4 A. MEMBER SHIP ISN'T REALLY AN EVENT WITH THE ITEF, YOU

03:47:32 5 BECOME A MEMBER BY GOING.

03:47:33 6 Q. SO YOU GO TO THE MEETINGS?

03:47:35 7 A. WELL, I DON'T THINK I HAVE BEEN SINCE 2005.

03:47:38 8 Q. OKAY. YOU WENT TO SOME OF THE MEETINGS?

03:47:41 9 A. I DID.

03:47:41 10 Q. BUT YOU'RE NOT AWARE OF ANY STANDARDS THAT THE ITEF HAS

03:47:45 11 ISSUED CONCERNING COMMAND-LINE INTERFACES; RIGHT?

03:47:47 12 A. NO, I'M NOT AWARE OF ANY.

03:47:49 13 Q. NOW, YOU'RE AWARE THAT JUNIPER HAS A CLI THAT'S PRETTY

03:47:56 14 DIFFERENT FROM ARISTA'S CLI; RIGHT?

03:47:59 15 A. IT'S DIFFERENT IN SOME NOTABLE WAYS.

03:48:04 16 Q. DIFFERENT IN SOME IMPORTANT WAYS, CORRECT?

03:48:06 17 A. I THINK IT'S DIFFERENT IN NOTABLE WAYS, YES.

03:48:11 18 Q. ARE YOU DRAWING A DISTINCTION BETWEEN NOTABLE AND

03:48:14 19 IMPORTANT?

03:48:15 20 A. IT'S NOTABLY DIFFERENT, I'M NOT SURE WHAT THE MEASURE OF

03:48:19 21 IMPORTANCE IS.

03:48:20 22 Q. I'M JUST GOING BY WHAT YOU INSIDE YOUR DEPO, I JUST WANT

03:48:24 23 TO KNOW IF YOU'RE MAKING A DISTINCTION BETWEEN NOTABLE AND

03:48:27 24 IMPORTANT?

03:48:27 25 MR. FERRALL: OBJECTION, YOUR HONOR. THIS LINE IS

09:23:12 1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
3 SAN JOSE DIVISION  
4  
5 CISCO SYSTEMS, INC., ) CV-14-5344-BLF  
6 )  
7 PLAINTIFF, ) SAN JOSE, CALIFORNIA  
VS. )  
8 ) DECEMBER 6, 2016  
9 ARISTA NETWORKS, INC., ) VOLUME 9  
10 DEFENDANT ) PAGES 1879-2157  
----- )

11 TRANSCRIPT OF PROCEEDINGS  
12 BEFORE THE HONORABLE BETH LABSON FREEMAN  
13 UNITED STATES DISTRICT JUDGE

14 A P P E A R A N C E S:

15 FOR THE PLAINTIFF: QUINN, EMANUEL, URQUHART & SULLIVAN  
16 BY: DAVID A. NELSON  
500 WEST MADISON STREET, SUITE 2450  
CHICAGO, IL 60661

17 FOR THE PLAINTIFF: QUINN, EMANUEL, URQUHART & SULLIVAN  
18 BY: SEAN PAK  
50 CALIFORNIA STREET, 22ND FLOOR  
SAN FRANCISCO, CALIFORNIA 94111

22 APPEARANCES CONTINUED ON NEXT PAGE

23 OFFICIAL COURT REPORTER: SUMMER FISHER, CSR, CRR  
24 CERTIFICATE NUMBER 13185

25 PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY  
TRANSCRIPT PRODUCED WITH COMPUTER

10:55:43 1 WAS NO SECRET. WE SPOKE ABOUT IT EVERY OPPORTUNITY WE GOT,  
10:55:49 2 EVERY TIME WE TALKED, WE TOLD THEM WHERE WE DIFFERENTIATED AND  
10:55:52 3 WHERE WE COMMUNICATED LIKE OTHERS.  
10:55:54 4 Q. SO WAS THIS STATEMENT ANYTHING NEW THAT YOU HADN'T SAID  
10:55:57 5 BEFORE?  
10:55:57 6 A. NO, I WAS JUST MAKING A POINT THAT THERE'S NO INVENTION IN  
10:56:01 7 THE STANDARD LANGUAGE OF NETWORKING, WHICH IS CLI, AND WE WERE  
10:56:06 8 ADOPTING THE SAME.  
10:56:06 9 Q. AND WHAT DID YOU MEAN WHERE YOU SAID "WHERE WE DON'T HAVE  
10:56:09 10 TO INVENT, WE DON'T?"  
10:56:10 11 A. MY POINT WAS WE USE OPEN SOURCE LINUX, WE USE INDUSTRY  
10:56:15 12 STANDARD CLI, AND THESE ARE NOT ARISTA INVENTIONS, THESE COME  
10:56:17 13 FROM THE INDUSTRY AND WE ADOPT THEM AS WELL.  
10:56:20 14 Q. AND COULD WE GO BACK TO THE COVER OF THIS DOCUMENT.  
10:56:26 15 WHAT'S THE DATE OF THIS INTERVIEW, MS. ULLAL?  
10:56:30 16 A. FEBRUARY 2013.  
10:56:33 17 Q. OKAY. SO THAT WAS ALMOST TWO YEARS BEFORE THE LAWSUIT WAS  
10:56:37 18 FILED?  
10:56:39 19 A. YEAH. I'M SURE I SAID IT IN 2012, '11, '10, '09, '08 AS  
10:56:46 20 WELL. IF YOU LOOK AT THE *NETWORK WORLD* ARTICLE, IT WAS IN  
10:56:51 21 2010, JANUARY, THE PRIOR ONE YOU SHOWED ME.  
10:56:52 22 Q. COULD YOU OPEN YOUR BINDER TO TX 566, PLEASE. MAYBE YOU  
10:57:06 23 DON'T HAVE IT. I DO.  
10:57:07 24 A. IS THIS A TRICK QUESTION?  
10:57:08 25 Q. MAYBE. DO YOU RECOGNIZE TX 566?

11:21:28 1 Q. AND YOU HAD NEVER ASKED ANYONE AT ARISTA WHETHER THEY HAD  
11:21:32 2 COPIED SCREEN OUTPUTS AND COMMANDS FROM CISCO PRODUCTS IN  
11:21:38 3 IMPLEMENTING ITS CLI, CORRECT?  
11:21:40 4 A. NO, I DID NOT.  
11:21:41 5 Q. OKAY. AND YOU AGREE WITH ME THAT IN TERMS OF CLI, YOU  
11:21:48 6 WERE NOT AWARE OF ANY STANDARDS SETTING ORGANIZATION FOR  
11:21:52 7 COMMAND-LINE INTERFACE COMMANDS, CORRECT?  
11:21:55 8 A. TO THE BEST OF MY KNOWLEDGE, NO.  
11:21:57 9 Q. OKAY. AND TO THE BEST OF YOUR KNOWLEDGE, YOU ADMIT THAT  
11:22:00 10 THERE ARE NO STANDARDS SETTING ORGANIZATIONS THAT REQUIRE THE  
11:22:04 11 USE OF CISCO CLI COMMANDS FOR INTEROPERABILITY, TRUE?  
11:22:08 12 A. THERE ARE NO STANDARD CLI ORGANIZATIONS FOR CISCO? I'M --  
11:22:16 13 CISCO WOULD HAVE TO ANSWER THAT, NOT ME.  
11:22:18 14 Q. OKAY.  
11:22:19 15 AND YOU WOULD AGREE THAT FOR ANY GIVEN FEATURE IN AN  
11:22:23 16 OPERATING SYSTEM, THERE ARE MANY DIFFERENT WAYS TO WRITE  
11:22:26 17 COMMANDS IN A COMMAND-LINE INTERFACE TO INVOKE THE SAME  
11:22:29 18 FEATURE, CORRECT?  
11:22:33 19 A. I'M NOT AN EXPERT ON HOW CLI COMMANDS ARE WRITTEN OR  
11:22:39 20 CHOSEN.  
11:22:40 21 Q. BUT YOU AGREE YOU CAN WRITE DIFFERENT COMMANDS FOR THE  
11:22:43 22 SAME FUNCTIONALITY; RIGHT?  
11:22:44 23 A. I DON'T WANT TO TAKE A POINT OF VIEW ON SOMETHING I'M NOT  
11:22:46 24 AN EXPERT ON.  
11:22:47 25 Q. OKAY. LET'S TAKE A LOOK AT WHAT YOU SAID IN YOUR

11:27:43 1 ARISTA ENGINEERS WERE COPYING CLI COMMANDS FROM CISCO?

11:27:46 2 A. NO.

11:27:46 3 Q. YOU NEVER TOLD CISCO OR CUSTOMERS THAT?

11:27:52 4 A. THOSE EXACT WORDS? HAVE I TOLD A CUSTOMER THAT ARISTA

11:27:58 5 ENGINEERS EXACTLY COPIED THE CISCO CLI, ARE YOU ASKING ME THAT?

11:28:02 6 TO THE BEST OF MY KNOWLEDGE, I DIDN'T USE THOSE EXACT WORDS.

11:28:05 7 I HAVE TOLD CUSTOMERS THAT WE INTEROPERATE WITH CISCO AND

11:28:09 8 WE HAVE THE SAME CISCO-LIKE CLI.

11:28:11 9 Q. ARE YOU DENYING THAT CUSTOMERS WERE TOLD BY ARISTA

11:28:16 10 ENGINEERS THAT CISCO'S CLI COMMANDS WERE COPIED INTO ARISTA

11:28:20 11 PRODUCTS? ARE YOU DENYING THAT?

11:28:24 12 A. THAT'S A SEPARATE QUESTION. YOU ARE ASKING ME IF I TOLD

11:28:27 13 ENGINEERS THAT ARISTA ENGINEERS DID THE WORK. NOW YOU ARE

11:28:30 14 ASKING ME A SLIGHTLY DIFFERENT QUESTION.

11:28:32 15 COULD YOU REPEAT THE QUESTION?

11:28:33 16 Q. YES.

11:28:35 17 ARE YOU DENYING THAT ARISTA PEOPLE TOLD CUSTOMERS THAT

11:28:40 18 ARISTA HAD COPIED CLI COMMANDS INTO ARISTA PRODUCTS?

11:28:45 19 A. YOU ARE ASKING WHAT ARISTA PEOPLE TOLD NOT WHAT I TOLD.

11:28:49 20 Q. CORRECT.

11:28:49 21 A. NO, I'M NOT DENYING THAT.

11:28:51 22 Q. YOU TALKED ABOUT AN EMPLOYEE THAT WAS TAKEN CARE OF,

11:29:01 23 MR. SOLLENDER; RIGHT?

11:29:04 24 A. I DIDN'T MENTION THE NAME IN THE TESTIMONY, BUT YES.

11:29:08 25 Q. SO WHEN YOU SAY TAKEN CARE OF, YOU FIRED THAT INDIVIDUAL,

02:10:34 1 A. YEAH. IT ESSENTIALLY EXPLAINS, I BELIEVE, THE EVOLUTION  
02:10:40 2 OF HOW THE IOS SOFTWARE, THAT'S KIND OF IN THE FIRST 1993  
02:10:48 3 VERTICAL, WHICH IS THE CORE SOFTWARE THAT OPERATES THE ROUTERS  
02:10:52 4 AND SWITCHES AT CISCO, SOME OF THE SWITCHES AT CISCO, DESCRIBED  
02:10:56 5 HOW THAT LANGUAGE, A PARSER IS HOW IOS INTERPRETS THE  
02:11:02 6 COMMAND-LINE INTERFACE. AND HOW THAT'S BECOMING, OR HOW,  
02:11:07 7 ESSENTIALLY, THE CLI IS BECOMING AN INDUSTRY STANDARD WHERE  
02:11:13 8 IT'S A COMMONLY ACCEPTED WAY IN WHICH USERS CAN ISSUE COMMANDS  
02:11:20 9 TO DEVICES THAT USE THE SOFTWARE CALLED IOS.  
02:11:23 10 Q. NOW CAN YOU SEE THAT THE DATE ON THIS DOCUMENT IS 2005?  
02:11:28 11 A. YES.  
02:11:29 12 Q. OKAY. AND SO I WOULD LIKE TO HIGHLIGHT WHAT WE HAVE ON  
02:11:33 13 THE SCREEN. IT SAYS, ACTUALLY SAYS, "CLI BECOMES INDUSTRY  
02:11:39 14 STANDARD." INDICATING A PERIOD BETWEEN '93 AND 2000.  
02:11:42 15 DO YOU SEE THAT?  
02:11:43 16 A. YES.  
02:11:43 17 Q. WAS THAT CONSISTENT WITH YOUR UNDERSTANDING ABOUT THE  
02:11:46 18 CISCO CLI DURING THE PERIOD WHEN YOU WERE MANAGING LINE UNITS  
02:11:53 19 THERE, THAT IT HAD BECOME AN INDUSTRY STANDARD?  
02:11:57 20 A. I STARTED MANAGING THE LINE UNITS AFTER 2001, SO THIS TIME  
02:12:01 21 PERIOD IS NOT A PERIOD OF TIME IN WHICH I MANAGED LINE UNITS.  
02:12:04 22 WHAT I INTERPRET FROM IT, WHEN I JOINED CISCO IN 1994, WE  
02:12:07 23 WERE A GOOD COMPANY, BUT WE WERE ONE OF MANY COMPETITORS IN THE  
02:12:12 24 SPACE. WE HAD LOTS OF -- LARGE AND SCARY COMPETITORS. AND BY  
02:12:18 25 2000 WE HAD LARGELY OUT-COMPETED MOST OF THEM. AND WE HAD

02:12:22 1 GAINED MUCH HIGHER MARKET SHARE BY THEN.

02:12:25 2 THE RESULT OF THAT HIGH MARKET SHARE AND THE BROAD USE OF

02:12:29 3 CISCO PRODUCTS IS WHAT PRESUMABLY CREATED THIS NOTION THAT IT

02:12:33 4 BECAME AN INDUSTRY STANDARD.

02:12:34 5 Q. DID YOU -- DO YOU RECALL HEARING PEOPLE ON OTHER OCCASIONS

02:12:39 6 DURING YOUR TENURE AS ONE OF THE MANAGERS AT CISCO, REFER TO

02:12:44 7 THE CLI AS INDUSTRY STANDARD, AS SHOWN IN THIS DOCUMENT?

02:12:47 8 A. YEAH. I DON'T REMEMBER EXACT CONVERSATIONS, BUT IT WAS

02:12:51 9 COMMONLY UNDERSTOOD.

02:12:52 10 Q. OKAY. WOULD YOU TAKE A LOOK AT 5457, AND THAT'S IN

02:13:00 11 EVIDENCE, SO COULD WE PUT THAT ON THE SCREEN.

02:13:05 12 ACTUALLY BEFORE WE LOOK AT IT, I WANT TO ASK A QUESTION OF

02:13:08 13 YOU, MR. VOLPI.

02:13:10 14 WHILE YOU WERE IN THE ETHERNET SWITCHING AND ROUTING UNITS

02:13:13 15 AT CISCO, DID CISCO ACTUALLY PROMOTE ITS CLI AS AN "INDUSTRY

02:13:18 16 STANDARD?"

02:13:19 17 A. I BELIEVE THE LANGUAGE WAS USED FAIRLY BROADLY IN THE

02:13:23 18 DOCUMENTATION THAT WE HAVE.

02:13:24 19 Q. AND BY DOCUMENTATION, DO YOU MEAN PUBLIC DOCUMENTATION?

02:13:28 20 A. YEAH, DOCUMENTATION WE WOULD USE AT MARKETING EVENTS OR

02:13:31 21 PROVIDE THEM TO CUSTOMERS.

02:13:33 22 Q. AND LET'S TAKE A LOOK NOW AT 5457, THAT'S ALREADY IN

02:13:36 23 EVIDENCE. AND I BELIEVE THERE'S A PAGE -- THIS IS A SOFTWARE

02:13:39 24 RELEASE. I BELIEVE SLIDE 96 WAS ONE WE HAVE LOOKED AT BEFORE.

02:13:45 25 I'M GOING TO BLOW THAT UP ON THE SCREEN, MR. VOLPI.

02:37:13 1 Q. SO CAN YOU SAY THAT ONE MORE TIME, SLOWLY, FOR THE JURY?

02:37:16 2 A. NO, I DID NOT LOOK AT COMPETING PRODUCTS.

02:37:19 3 Q. AND YOU DID NOT DO THAT INTENTIONALLY?

02:37:21 4 A. INTENTIONALLY, YES.

02:37:23 5 Q. AND WHY DID YOU DECIDE, AS THE CREATOR OF THE JUNIPER CLI,

02:37:27 6 TO CHOOSE NOT TO INTENTIONALLY LOOK AT A COMPETING CLI FROM

02:37:32 7 CISCO?

02:37:32 8 A. THERE WERE THREE MAIN REASONS.

02:37:36 9 THE FIRST WAS WE DIDN'T WANT TO GIVE CISCO ANY GROUNDS TO

02:37:39 10 SUE US.

02:37:40 11 THE SECOND WAS THE -- BASED ON FEEDBACK FROM THE

02:37:51 12 CUSTOMERS, WE WANTED TO DO SOMETHING BETTER.

02:37:52 13 AND THE THIRD WAS, YOU KNOW, AS A NEW COMPANY HAVING THIS

02:37:56 14 INCREDIBLE GREEN FIELD EXPERIENCE OPPORTUNITY, I WANTED TO

02:37:59 15 WRITE SOMETHING COMPLETELY NEW, SOMETHING THAT I WANTED TO MAKE

02:38:02 16 AND USE. I DIDN'T WANT TO COPY SOMETHING.

02:38:05 17 Q. OKAY. SO I WANT TO GO THROUGH EACH OF THOSE REASONS THAT

02:38:09 18 YOU JUST STATED ON THE RECORD.

02:38:10 19 SO FIRST OF ALL, WHEN YOU SAID GREEN FIELD PRODUCT OR THIS

02:38:13 20 WAS A BRAND-NEW OPPORTUNITY FOR YOU, WHAT DID YOU MEAN BY THAT?

02:38:17 21 AND CAN YOU EXPLAIN WHY THAT WAS AN INFLUENCE ON YOU IN

02:38:20 22 DECIDING TO CREATE THE JUNOS CLI?

02:38:22 23 A. SO THE TERM "GREEN FIELD" COMES FROM AN OPEN PASTURE. YOU

02:38:26 24 CAN GO IN ANY DIRECTION, EVERYTHING IS WILD. YOU CAN MAKE IT

02:38:30 25 WHAT YOU WANT. THERE ARE NO CONSTRAINTS ON WHAT YOU ARE DOING.

02:38:34 1 I KIND OF HAD THAT OPPORTUNITY IN WHAT I COULD DO,

02:38:44 2 LITERALLY NOBODY COULD SAY THAT, DON'T DO THAT, I COULD DO

02:38:45 3 WHATEVER I WANTED.

02:38:46 4 Q. THAT WAS BECAUSE YOU WERE AT JUNIPER AND THEY WERE WORKING

02:38:49 5 ON THEIR FIRST CLI?

02:38:50 6 A. IT WAS A SMALL COMPANY AND WE HAD TECHNICAL REVIEW AND

02:38:53 7 STUFF LIKE THAT, BUT IT WAS REALLY AN OPPORTUNITY TO REIMAGINE

02:38:57 8 THE INTERACTION BETWEEN USERS AND DEVICES.

02:39:00 9 Q. AND WAS THAT AN EXCITING OPPORTUNITY FOR YOU?

02:39:02 10 A. YES, IT WAS.

02:39:02 11 Q. AND THE SECOND REASON, I THINK YOU MENTIONED WAS SOMETHING

02:39:06 12 ABOUT CUSTOMERS, CUSTOMER FEEDBACK.

02:39:09 13 AND CAN YOU EXPLAIN A LITTLE BIT FURTHER ABOUT SOME OF THE

02:39:13 14 CUSTOMER FEEDBACK THAT YOU HAD BEEN HEARING ABOUT CISCO CLI AND

02:39:16 15 HOW THAT INFLUENCED YOUR DECISION TO COME UP WITH A DIFFERENT

02:39:19 16 USER INTERFACE FOR JUNIPER?

02:39:21 17 A. SURE.

02:39:23 18 IF YOU -- SO IOS, EVEN AT THAT POINT IN '97, WAS FAIRLY

02:39:29 19 OLD. AND THE WAY IT APPROACHED CONFIGURATION OF THE COMMANDS

02:39:33 20 AND THE USER INTERACTION WAS FAIRLY DATED.

02:39:38 21 WE WANTED TO DO SOMETHING MORE MODERN, SOMETHING MORE

02:39:43 22 HIERARCHICAL, SOMETHING THAT WOULD HELP USERS IN THE DAY-TO-DAY

02:39:49 23 OPERATIONS THAT THEY USED OUR DEVICES FOR.

02:39:51 24 Q. NOW THE OTHER THIRD REASON THAT YOU MENTIONED IS IN

02:39:55 25 LOOKING AT CISCO'S IOS CLI, YOU WERE CONCERNED THAT YOU DIDN'T

02:40:00 1 WANT TO GET SUED BY CISCO.

02:40:01 2 CAN YOU EXPLAIN FURTHER, FOR THE JURORS, WHAT THAT CONCERN

02:40:04 3 WAS ABOUT?

02:40:04 4 A. SO BEFORE COMING TO JUNIPER I WAS EMPLOYED AS A CONTRACTOR

02:40:09 5 FOR IBM, AND IBM HAS A VERY, A VERY STRINGENT POLICY OF NOT

02:40:15 6 ALLOWING DEVELOPERS TO LOOK AT COMPETITORS'S PRODUCTS.

02:40:19 7 WE WOULD GET REPORTS AND CRITIQUES ON WHAT WAS AVAILABLE

02:40:24 8 IN THE MARKETPLACE, BUT WE DIDN'T ACTUALLY LOOK AT PRODUCTS.

02:40:27 9 IT WAS KIND OF A WALL TO KEEP US FROM ANY SUSPICION OR ANY

02:40:31 10 TAINT OF DERIVATIVE -- OF BEING CALLED A DERIVATIVE PRODUCT.

02:40:43 11 Q. SO BY NOT LOOKING AT CISCO'S CLI AND USING CISCO'S CLI

02:40:48 12 COMMANDS, WERE YOU TRYING TO AVOID INFRINGING ANY OF CISCO'S

02:40:52 13 INTELLECTUAL PROPERTY RIGHTS?

02:40:53 14 A. I WAS TRYING TO STAY CLEAR OF ANY ALLEGATION OF SUCH

02:41:02 15 BEHAVIOR.

02:41:03 16 Q. OKAY. AND ARE YOU PROUD OF THE WORK THAT YOU'VE DONE WITH

02:41:06 17 YOUR JUNOS CLI?

02:41:07 18 A. ABSOLUTELY.

02:41:08 19 Q. AND HOW MANY, I KNOW IT'S HARD TO ESTIMATE, BUT HOW MANY

02:41:12 20 PRODUCTS WITHIN JUNIPER OVER THIS LONG PERIOD OF TIME HAVE RUN

02:41:17 21 SOME VERSION OF YOUR JUNIPER JUNOS CLI?

02:41:22 22 A. I COULDN'T PUT A NUMBER ON IT, NORTH OF 18 OR 20.

02:41:29 23 Q. OKAY. AND HAS JUNIPER BEEN ABLE TO EFFECTIVELY COMPETE

02:41:35 24 AGAINST CISCO IN VARIOUS MARKETS DURING YOUR TENURE THERE USING

02:41:41 25 A CLI THAT IS DIFFERENT FROM CISCO'S CLI?

02:41:43 1 A. YES.

02:41:44 2 Q. AND IN FACT, IN THE ROUTER MARKET, HOW WOULD YOU

02:41:48 3 CHARACTERIZE JUNIPER'S MARKET SHARE AS COMPARED TO CISCO'S?

02:41:51 4 A. I BELIEVE WE ARE NUMBER TWO.

02:41:53 5 Q. SO YOU WERE ABLE TO GAIN A NUMBER TWO MARKET SHARE IN THE

02:42:06 6 COMPETITIVE ROUTER MARKET COMPETING AGAINST CISCO BY USING A

02:42:10 7 USER INTERFACE THAT IS DIFFERENT THAN CISCO'S, IS THAT TRUE?

02:42:13 8 A. YES, THAT IS TRUE.

02:42:15 9 Q. AND I WOULD LIKE TO HAVE YOU TAKE A LOOK IN YOUR BINDER, I

02:42:21 10 BELIEVE THERE SHOULD BE A TRIAL EXHIBIT 4821.

02:42:31 11 I BELIEVE THIS HAS ALREADY BEEN ADMITTED INTO EVIDENCE?

02:42:34 12 MR. VAN NEST: IT HAS.

02:42:35 13 MR. PAK: SO I WOULD LIKE TO SHOW THAT ON THE SCREEN,

02:42:37 14 MR. FISHER.

02:42:39 15 Q. MR. SHAFER, THESE ARE SOME OF THE COMMANDS THAT ARE AT

02:42:42 16 ISSUE IN THIS CASE THAT ARE CISCO COMMANDS.

02:42:44 17 CAN YOU -- I KNOW YOU HAVEN'T STUDIED THIS IN DETAIL, BUT

02:42:48 18 COULD YOU JUST FLIP THROUGH THIS COMMAND LIST AND LET THE JURY

02:42:51 19 KNOW WHETHER THIS LOOKS LIKE A LIST OF JUNIPER COMMANDS OR NOT.

02:42:59 20 DO THEY LOOK FAMILIAR TO YOU AS JUNIPER COMMANDS?

02:43:02 21 A. THESE ARE CERTAINLY NOT JUNIPER COMMANDS.

02:43:04 22 Q. AND WHY DO YOU SAY THAT?

02:43:06 23 A. THE STYLE BETWEEN IOS AND JUNOS IS VERY DIFFERENT IN TWO

02:43:12 24 PARTS.

02:43:12 25 ONE IS IOS REGARDS CONFIGURATION AS JUST A SERIES OF

03:40:14 1 Q. DO YOU RECALL, DR. BLACK, THE APPROXIMATE VINTAGE, WHEN  
03:40:16 2 THIS MANUAL CAME OUT?

03:40:18 3 A. IT'S 1980.

03:40:20 4 Q. AND DEC IS DIGITAL EQUIPMENT CORPORATION; IS THAT RIGHT?

03:40:22 5 A. THAT'S RIGHT.

03:40:24 6 Q. IF WE COULD GO TO PAGE 35 OF THIS MANUAL, PLEASE.

03:40:33 7 A. I'M THERE.

03:40:35 8 Q. CAN YOU EXPLAIN TO THE JURY WHAT YOU FOUND HERE THAT'S  
03:40:41 9 RELATED TO THE ASSERTED CLI COMMANDS?

03:40:44 10 A. SURE.  
  
03:40:44 11 SO THIS MANUAL IS A REFERENCE MANUAL THAT GIVES LOTS OF  
03:40:48 12 DIFFERENT CLI COMMANDS. AND HERE YOU CAN SEE THAT THERE IS A  
03:40:52 13 COMMAND CALLED "SHOW," RIGHT AROUND THE MIDDLE OF THE PAGE  
03:40:57 14 THERE.  
  
03:40:58 15 AND THAT "SHOW" HAS VARIOUS OTHER WORDS, COMMAND WORDS  
03:41:00 16 THAT CAN FOLLOW IT. I THINK IT'S CODED AS "ENTITY" HERE, THEN  
03:41:06 17 THE ENTITIES ARE LISTED BELOW THAT AS ACTIVE LINES, ACTIVE  
03:41:10 18 LOGGING AND SO FORTH.

03:41:11 19 Q. AND HOW, IF AT ALL, DID THAT RELATE TO THE ASSERTED CLI  
03:41:15 20 COMMANDS IN THIS CASE?

03:41:17 21 A. SO THERE ARE 506 TOTAL ASSERTED COMMANDS, I THINK IN THE  
03:41:24 22 NEIGHBORHOOD OF 150 OF THEM FOLLOW THE SAME SORT OF PATTERN.  
  
03:41:27 23 THEY START WITH THE WORD "SHOW," THEN THEY NAME SOMETHING  
03:41:31 24 TO BE SHOWN RIGHT AFTER THAT.

03:41:33 25 Q. AND ARE YOU FAMILIAR WITH ANOTHER OPERATING SYSTEM CALLED

03:41:39 1 QPR?

03:41:40 2 A. I THINK IT'S OPR.

03:41:41 3 Q. OPR, SORRY.

03:41:43 4 A. I'VE NEVER PERSONALLY USED IT. IT WAS THE CLI THAT

03:41:46 5 MR. LOUGHEED TESTIFIED THAT HE HAD USED AS PART OF THE QUASAR

03:41:50 6 PRINT SYSTEM, AND HE TESTIFIED THAT THERE WAS A SHOW COMMAND

03:41:54 7 THERE AS WELL.

03:41:55 8 Q. THAT WAS WHAT MR. LOUGHEED USED BEFORE HE JOINED CISCO?

03:42:00 9 A. MY UNDERSTANDING WAS THAT WAS AT STANFORD, YES.

03:42:03 10 Q. NOW HAVE YOU LOOKED AT OTHER MANUALS IN ADDITION TO THIS

03:42:10 11 DEC NET MANUAL?

03:42:11 12 A. YEAH, I LOOKED AT A NUMBER OF OTHER MANUALS, ONE FOR RSX

03:42:17 13 11 AND ANOTHER ONE FOR VMS AND MANUALS IN THIS TIMEFRAME.

03:42:23 14 Q. DID YOU LOOK AT ANYTHING FOR TOPS 20?

03:42:26 15 A. YEAH. THERE'S A TOPS 20 MANUAL I LOOKED AT, THAT I THINK

03:42:29 16 IS AROUND HERE.

03:42:30 17 Q. OKAY. WELL, WHAT I WOULD LIKE TO DO IS, IF POSSIBLE, SHOW

03:42:35 18 NOW A SUMMARY OF THE FINDINGS THAT YOU GATHERED FROM YOUR

03:42:41 19 REVIEW OF PRIOR OPERATING SYSTEMS?

03:42:43 20 A. SURE.

03:42:43 21 Q. OKAY. IF WE COULD PULL UP SLIDE 11.

03:42:50 22 CAN YOU EXPLAIN WHAT THIS IS?

03:42:51 23 A. SURE.

03:42:52 24 SO CORRESPONDING TO THAT BROWN BUBBLE ON MY AMAZING

03:42:58 25 DRAWING OVER THERE, THESE ARE WORDS THAT I FOUND IN MANUALS

03:43:02 1 FROM LEGACY CLI'S, CLI PRODUCTS THAT PRE-DATE CISCO, AND THAT

03:43:07 2 ARE AMONG THE TERMS USED BY CISCO'S CLI IN THE ASSERTED

03:43:12 3 COMMANDS.

03:43:13 4 Q. AND I THINK YOU SAID THAT THERE'S OVER 150 "SHOW"

03:43:18 5 COMMANDS. WHAT ABOUT "CLEAR," DO YOU REMEMBER HOW MANY OF THE

03:43:21 6 ASSERTED COMMANDS IN THIS CASE USE "CLEAR?"

03:43:27 7 A. NOT A FAN, IT WAS FAR FEWER, MAYBE 10 OR 20.

03:43:36 8 Q. NOW DID YOU PERFORM A SIMILAR ANALYSIS REGARDING THE

03:43:39 9 ASSERTED MODES IN THE CASE?

03:43:41 10 A. YEAH. SO JUST TO REMIND EVERYONE, THE MODES ARE THESE

03:43:50 11 THINGS THAT ARE NAMED LIKE USER, EXEC, PRIVILEGED EXEC, CONFIG,

03:43:56 12 INTERFACE CONFIG, AND THEY COME WITH PROMPTS IN THE ANGLED

03:44:00 13 BRACKETS, AND THE POUND.

03:44:01 14 Q. AND WE HAVE A SLIDE THAT SUMMARIZES YOUR FINDINGS WITH

03:44:04 15 RESPECT TO MODES?

03:44:05 16 A. WE DO.

03:44:05 17 Q. AND LET'S PUT THAT UP.

03:44:07 18 BUT BEFORE WE TALK ABOUT IT, LET ME ASK YOU, WHERE DID YOU

03:44:10 19 FIND YOUR BASIS FOR YOUR OPINION REGARDING THE PRESENCE OF

03:44:15 20 THESE MODES IN PRIOR OPERATING SYSTEMS?

03:44:17 21 A. I MEAN, ONCE AGAIN, I AM FAMILIAR WITH THESE OLD CLI'S, I

03:44:21 22 USED THEM PERSONALLY, BUT I ALSO LOOKED IN THE MANUALS THAT WE

03:44:26 23 TALKED ABOUT.

03:44:26 24 Q. OKAY. LET'S PULL UP SLIDE 14, PLEASE.

03:44:31 25 CAN YOU EXPLAIN WHAT IS SHOWING HERE.

03:44:34 1 A. SURE.

03:44:35 2 SO THE CLI IN TOPS 20 IS CALLED EXEC. AND CISCO'S BASIC

03:44:40 3 LOWEST LEVEL MODE IS CALLED USER EXEC. AND MR. LOUGHEED HAS

03:44:44 4 TESTIFIED THAT HE WAS INSPIRED BY THAT WHEN HE CREATED CISCO'S

03:44:48 5 PRODUCT. THE PRIVILEGED MODES, THE IDEA OF HAVING A PRIVILEGED

03:44:52 6 MODE WHERE YOU GET SUPER POWERS, ELEVATED PRIVILEGES, THAT WAS

03:44:57 7 IN TOPS 20, IT'S ALSO A CONCEPT IN UNIX WHICH IS STILL AROUND

03:45:01 8 AND STILL HAS THAT CONCEPT.

03:45:02 9 THE ANGLE BRACKET PROMPT THAT'S USED IN CISCO'S

03:45:06 10 UNPRIVILEGED MODE, THAT WAS IN CP/M, USED IN CP/M AND IT IS

03:45:12 11 USED IN MS-DOS, STILL TO THIS DAY.

03:45:14 12 THEN THE PRIVILEGED MODE PROMPT IS THIS HASH MARK, POUND

03:45:19 13 SIGN, AND THAT WAS IN UNIX SINCE THE 60'S.

03:45:22 14 Q. ALL RIGHT. I NEGLECTED TO ASK YOU TO -- I WOULD LIKE TO

03:45:30 15 GO BACK TO SLIDE 11 BECAUSE I JUST WANT TO MAKE SURE THE RECORD

03:45:33 16 IS CLEAR.

03:45:41 17 CAN YOU JUST READ INTO THE RECORD, DR. BLACK, THE TERMS

03:45:44 18 THAT YOU FOUND FROM PRIOR OPERATING SYSTEMS?

03:45:45 19 A. YOU WANT ME TO READ EVERYTHING ON THE SLIDE?

03:45:47 20 Q. PLEASE.

03:45:48 21 A. BANNER, BOOT, CLEAR, CLOCK, ENABLE, ERASE, LENGTH, LOAD,

03:45:53 22 MOTD, NO, SET, SHOW, AND TERMINAL.

03:46:06 23 Q. THANK YOU.

03:46:08 24 NOW LET'S TURN TO YOUR SECOND CIRCLE, THE BLUE CIRCLE,

03:46:12 25 COMMON NETWORKING TERMS.

03:46:14 1 A. OKAY.

03:46:15 2 Q. WHAT DID YOU DO TO REACH A CONCLUSION ABOUT THE COMMON

03:46:18 3 PRESENCE OF NETWORKING TERMS?

03:46:19 4 A. THAT WAS MORE OF A JUDGMENT CALL. AND, YOU KNOW, IF I

03:46:24 5 BELIEVE THAT I HEARD PEOPLE SAY IT AND USE IT AND IT'S PART OF

03:46:28 6 THE LEXICON, THINGS LIKE "HOST" AND "NETWORK" AND "INTERFACES,"

03:46:31 7 THEN I COLORED IT BLUE OR I DEEMED IT TO BE IN THE BLUE CIRCLE.

03:46:37 8 Q. ALL RIGHT. AND I THINK WE HAVE A SLIDE OF THE TERMS THAT

03:46:40 9 YOU CONCLUDED WERE COMMON NETWORKING TERMS. IF WE COULD PULL

03:46:44 10 UP SLIDE 17.

03:46:54 11 IT'S A LITTLE BIT HARD TO SEE. BUT APPROXIMATELY HOW MANY

03:46:58 12 TERMS HERE DID YOU CONCLUDE WERE COMMON NETWORKING TERMS?

03:47:02 13 A. IT LOOKS LIKE MAYBE 70 OR 80.

03:47:10 14 Q. AND DID YOU SEE ANY EVIDENCE IN THE RECORD, AGAIN FROM

03:47:14 15 DISCOVERY, ABOUT HOW COMMON NETWORKING TERMS WERE ACTUALLY USED

03:47:17 16 BY CISCO ENGINEERS IN DEVISING CLI COMMANDS?

03:47:22 17 A. YEAH. I MEAN, THE ENGINEERS TESTIFIED THAT THEY WANTED TO

03:47:26 18 USE TERMS THAT WERE FAMILIAR TO THEIR USERS, AND THEIR USERS

03:47:29 19 ARE NETWORK ENGINEERS.

03:47:30 20 AND SO SOME OF THESE TERMS MIGHT LOOK PRETTY CRAZY LIKE

03:47:34 21 THAT'S NOT A COMMON TERM, BUT THINGS LIKE, I DON'T KNOW, REGEX,

03:47:41 22 WHICH APPEARS IN THE LIST HERE, IT LOOKS LIKE IT'S GREEK, BUT

03:47:43 23 IT'S ACTUALLY A COMMON TERM USED THROUGHOUT COMPUTER SCIENCE.

03:47:48 24 IT MEANS REGULAR EXPRESSION.

03:47:50 25 WHEN YOU GO TO SCHOOL AND YOU TAKE ONE OF MY CLASSES, OR

03:47:52 1 SOME OF MY CLASSES, YOU LEARN WHAT THAT MEANS.

03:47:55 2 Q. AND OTHERS, I SUPPOSE, ARE LESS CONTROVERSIAL LIKE "LOGIN"

03:47:59 3 OR "LINK;" IS THAT FAIR?

03:48:01 4 A. YEAH. I MEAN SOME OF THEM ARE LIKE "RUN" OR "OUT" OR

03:48:05 5 "USERS," OR "IN," THOSE, I THINK, ARE CLEARLY IN COMMON USE.

03:48:14 6 Q. OKAY. I'M NOT GOING TO ASK YOU TO READ ALL OF THESE INTO

03:48:18 7 THE RECORD.

03:48:18 8 A. THANK YOU.

03:48:19 9 Q. NOW YOUR THIRD CATEGORY IN GREEN WAS INDUSTRY STANDARD

03:48:22 10 TERMS.

03:48:22 11 CAN YOU EXPLAIN WHAT YOU DID TO ANALYZE THE EXTENT TO

03:48:27 12 WHICH THE ASSERTED CLI ELEMENTS USED INDUSTRY STANDARD TERMS?

03:48:31 13 A. SURE.

03:48:33 14 SO I MEAN, I RECOGNIZED -- IF YOU LOOK AT THIS LIST OF 506

03:48:37 15 COMMANDS, A LOT OF THEM ARE NAMING PROTOCOLS AND NAMING TERMS

03:48:43 16 WITHIN THOSE PROTOCOLS WHICH I IMMEDIATELY RECOGNIZED BECAUSE I

03:48:46 17 READ A LOT OF THESE STANDARDS PRIOR TO MY ENGAGEMENT IN THE

03:48:49 18 CASE.

03:48:50 19 BUT IN ORDER TO CONDUCT BY ANALYSIS, I WENT TO THE

03:48:52 20 SPECIFICATIONS FOR THOSE PROTOCOLS. AND IN THE IETF, IT'S

03:48:55 21 CALLED AN RFC, WE'VE HEARD ABOUT THAT A BUNCH. IN THE IEEE,

03:49:00 22 THE SPEC STARTED WITH 802.SOMETHING.

03:49:04 23 SO I LOOKED AT THOSE SPECIFICATIONS TO FIND TERMS THAT LAY

03:49:08 24 WITHIN THEM.

03:49:08 25 Q. AND CAN YOU TELL ME, IN GENERAL, WE WILL GET INTO SOME

03:49:12 1 SPECIFICS, BUT IN GENERAL, WHAT DID YOU FIND?

03:49:16 2 A. I FOUND FOR THE VAST MAJORITY OF TERMS IN THE ACCUSED CLI

03:49:21 3 COMMAND, THEY COULD BE FOUND IN THE TITLE AND IN THE CONTENTS

03:49:25 4 OF THE INDUSTRY STANDARD SPECIFICATIONS.

03:49:28 5 Q. ALL RIGHT. NOW I WOULD LIKE TO PULL UP SLIDE 19, PLEASE.

03:49:39 6 WHAT DO YOU UNDERSTAND THIS TO BE, DR. BLACK?

03:49:42 7 A. THESE ARE SOME DOT1X COMMANDS. SO THIS IS IEEE. AND AS I

03:49:49 8 JUST SAID THEY START WITH 802. SO THIS IS WRITTEN 802 DOT1X

03:49:54 9 BUT PEOPLE CALL IT DOT1X FOR SHORT. AND THIS IS ACTUALLY A

03:49:59 10 SECURITY PROTOCOL. THE THIRD ONE DOWN HERE WHICH IS DOT1X

03:50:03 11 SYSTEM AUTH CONTROL. THAT TURNS ON THE FEATURE. SO THAT'S

03:50:06 12 LIKE A BUTTON, YOU TYPE IT IN AND THAT IT TURNS IT ON.

03:50:11 13 AND THEN THE SECOND ONE, DOT1X RE-AUTHENTICATION FEATURE,

03:50:16 14 THAT TURNS ON THE RE-AUTHENTICATION FEATURE, LIKE ANOTHER

03:50:18 15 BUTTON.

03:50:19 16 AND THEN THE BOTTOM THREE ARE LIKE KNOBS, YOU SET AN

03:50:22 17 INTERVAL AND A NUMBER OF SECONDS THAT YOU WANT THE CERTAIN

03:50:24 18 FEATURE TO BE INVOKED.

03:50:25 19 Q. AND ARE ALL OF THESE ASSERTED COMMANDS IN THE CASE?

03:50:28 20 A. I BELIEVE ALL SIX ARE, YES.

03:50:30 21 Q. ALL RIGHT. AND IS THERE A SPECIFICATION FOR DOT1X?

03:50:36 22 A. YES, IT'S THE 802 DOT1X SPECIFICATION.

03:50:41 23 Q. APTLY NAMED. IF YOU COULD LOOK AT 6801 IN YOUR BINDER.

03:51:02 24 A. I HAVE IT.

03:51:02 25 Q. IS THAT THE 802 DOT1X SPECIFICATION, AT LEAST AS OF 2001?

03:51:08 1 A. YES IT IS.

03:51:09 2 MR. FERRALL: YOUR HONOR, I WOULD MOVE EXHIBIT 6801

03:51:11 3 IN EVIDENCE.

03:51:12 4 MR. NELSON: NO OBJECTION.

03:51:13 5 THE COURT: IT WILL BE ADMITTED.

03:51:14 6 (DEFENDANT'S EXHIBIT 6801 WAS ADMITTED INTO EVIDENCE.)

03:51:14 7 BY MR. FERRALL:

03:51:44 8 Q. SO DR. BLACK, IF WE GO TO I THINK THE PAGE ENDING 593 IN

03:51:53 9 THE EXHIBIT 6801?

03:51:56 10 A. I SEE IT.

03:51:57 11 Q. ALL RIGHT. CAN YOU TELL US WHAT YOU FOUND HERE REGARDING

03:52:03 12 THE FIRST CLI COMMAND IN THIS LIST?

03:52:05 13 A. YEAH. SO I MEAN, PAE MEANS PORT ACCESS ENTITY. YOU CAN

03:52:10 14 SEE THAT ACRONYM ON THE PAGE IN VARIOUS PLACES. AND THEN ON

03:52:15 15 831 YOU SEE THE WORD AUTHENTICATOR, WHICH IS ALSO THE THIRD

03:52:19 16 TERM IN THE ASSERTED COMMAND.

03:52:21 17 Q. IS AUTHENTICATOR A FUNCTION OR A FEATURE THAT IS EXPLAINED

03:52:26 18 IN THE 802 DOT1X STANDARD ITSELF?

03:52:31 19 A. YEAH. THERE ARE THREE ACTORS IN 8021X. THERE'S THE

03:52:39 20 SUPPLICANT AUTHENTICATOR AND THE AUTHENTICATION SERVER, SO IT'S

03:52:41 21 THE MIDDLE OF THOSE THREE.

03:52:42 22 Q. IS THE TERM "AUTHENTICATOR" IN THE CISCO CLI COMMAND, IS

03:52:47 23 THAT USED IN THE SAME WAY AS IT'S USED IN THE SPECIFICATION?

03:52:51 24 A. YES, IT IS.

03:52:52 25 Q. ALL RIGHT. LET'S LOOK AT THE DOT1X RE-AUTHENTICATION

03:52:57 1 COMMAND, AND IF WE COULD GO TO PAGE ENDING IN 615.

03:53:11 2 DR. BLACK, CAN YOU TELL US WHAT'S ON THIS PAGE REGARDING

03:53:15 3 THE SECOND COMMAND HERE?

03:53:16 4 A. YEAH. SO THAT ONE IS A LITTLE SIMPLER. IT SAYS

03:53:20 5 "RE-AUTHENTICATION" AND THERE'S A HEADING THAT TALKS ABOUT THAT

03:53:22 6 FEATURE, THE RE-AUTHENTICATION FEATURE, WHICH IS THE ONE THAT

03:53:25 7 SAYS I'VE GOT TO KEEP ASKING FOR YOUR PASSWORD, OVER, AND OVER,

03:53:29 8 AND OVER ON AN INTERVAL, THAT'S WHAT IT'S DOING.

03:53:32 9 Q. IS THERE ANOTHER COMMAND YOU WOULD LIKE TO EXPLAIN TO THE

03:53:35 10 JURY, I WILL LET YOU PICK THE NEXT ONE.

03:53:38 11 A. OH, GEEZ. YOU WANT ME TO JUST PICK FROM THE LIST HERE?

03:53:46 12 Q. YEAH, WHICH ONE DO YOU WANT TO TALK ABOUT?

03:53:47 13 A. TIMEOUT QUIET-PERIOD.

03:53:52 14 Q. OKAY. SO I THINK THAT ONE -- LET'S GO TO PAGE 609.

03:54:07 15 MR. DAHM? OKAY. SORRY.

03:54:07 16 THE COURT: HE'S HAVING A TIME OUT QUIET PERIOD.

03:54:13 17 THE WITNESS: OKAY. SO THAT ONE WAS -- WHAT DID I

03:54:15 18 CHOOSE? TIME OUT QUIET PERIOD?

03:54:17 19 OKAY. IN THE MIDDLE OF THE PAGE THERE, THERE'S A HEADING

03:54:23 20 IT'S QUIET PERIOD, WHICH IS THE AMOUNT OF TIME TO WAIT BEFORE

03:54:26 21 NAGGING SOMEONE AGAIN.

03:54:28 22 AND IT'S SPELLED WITH DIFFERENT CAPITALIZATION AND THERE'S

03:54:31 23 NO HYPHEN, BUT IN THE CISCO VERSION THERE IS.

03:54:35 24 Q. DOES CAPITALIZATION MATTER IN A PARSER, TO YOUR KNOWLEDGE?

03:54:39 25 A. IT DEPENDS ON THE PARSER.

03:54:40 1 FOR CISCO AND ARISTA AND THE OTHER ONES I'VE USED, IT'S  
03:54:45 2 CASE INSENSITIVE WHICH MEAN ITS DOESN'T MATTER IF IT'S UPPER OR  
03:54:49 3 LOWER. IN CERTAIN OTHER CONTEXT, IT CAN MATTER.  
03:54:55 4 Q. NOW DID YOU DO THIS SORT OF ANALYSIS FOR OTHER INDUSTRY  
03:55:02 5 STANDARD PUBLICATIONS IN ADDITION TO DOT1X?  
03:55:04 6 A. YEAH, I LOOKED AT A LARGE NUMBER OF THEM, IN FACT.  
03:55:07 7 Q. DO YOU HAVE ANY ESTIMATE OF HOW MANY STANDARDS YOU LOOKED  
03:55:10 8 AT?  
03:55:10 9 A. OH, WOW, 30 OR 40, MAYBE.  
03:55:16 10 Q. DID YOU LOOK AT A STANDARD FOR OSPF, FOR EXAMPLE?  
03:55:22 11 A. YES.  
03:55:22 12 Q. ALL RIGHT. CAN YOU LOOK AT EXHIBIT 6817 IN YOUR BINDER.  
03:55:31 13 A. OKAY.  
03:55:33 14 Q. IS THAT THE OSPF STANDARD OR AT LEAST ONE OF THE RFC'S FOR  
03:55:39 15 OSPF THAT YOU LOOKED AT FOR THIS ANALYSIS?  
03:55:42 16 A. IT'S ONE OF THEM, YES.  
03:55:44 17 MR. FERRALL: YOUR HONOR, I WOULD LIKE TO MOVE  
03:55:46 18 EXHIBIT 6817 INTO EVIDENCE.  
03:55:47 19 MR. NELSON: BASED ON THAT DESCRIPTION, I'M FINE  
03:55:49 20 YOUR HONOR. I'M HAVING TROUBLE KEEPING UP, BUT I'M OKAY WITH  
03:55:53 21 IT.  
03:55:53 22 THE COURT: IT WILL BE ADMITTED.  
03:55:55 23 (DEFENDANT'S EXHIBIT 6817 WAS ADMITTED INTO EVIDENCE.)  
03:55:55 24 BY MR. FERRALL:  
03:56:01 25 Q. OKAY. AND WE ARE NOT GOING TO BE ABLE TO GO THROUGH THIS,

03:56:04 1 MUCH TO THE JURY'S PLEASURE TO HEAR THAT WE ARE NOT GOING TO GO

03:56:08 2 THROUGH THIS FOR EVERY COMMAND, BUT SUFFICE IT TO SAY, DID YOU

03:56:12 3 PERFORM IN SIMILAR ANALYSIS FOR THE OSPF STANDARD AND OTHERS?

03:56:18 4 A. I DID.

03:56:18 5 Q. AND DID YOU PREPARE A SUMMARY OF THE NUMBER OF COMMANDS

03:56:21 6 THAT, THE NUMBER OF COMMAND TERMS THAT ARE ASSERTED IN THIS

03:56:26 7 CASE THAT CAME FROM ITEF PUBLICATIONS LIKE RFC'S?

03:56:31 8 A. YES.

03:56:32 9 Q. ALL RIGHT. AND IF WE COULD LOOK AT SLIDE 15.

03:56:40 10 A. SO THIS IS THE ITEF VERSION, THESE ARE A SAMPLING OF THE

03:56:45 11 VARIOUS COMMAND TERMS. IN FACT, EVERY ONE OF THESE IS A

03:56:49 12 PROTOCOL.

03:56:49 13 AND SO THERE ARE, I DON'T KNOW, ABOUT 20 OR SO OF THOSE ON

03:56:52 14 THE SLIDE.

03:56:57 15 Q. SO ARE THESE TERMS USED IN ASSERTED COMMANDS?

03:56:59 16 A. I THINK, YEAH, EVERY ONE OF THEM IS.

03:57:01 17 Q. SOMETIMES MULTIPLE TIMES?

03:57:03 18 A. NOT WITHIN THE SAME COMMAND, BUT YEAH, IT MIGHT BE

03:57:06 19 MULTIPLE COMMANDS THAT USE A GIVEN TERM.

03:57:08 20 Q. ALL RIGHT.

03:57:09 21 AND HOW ABOUT IEEE STANDARDS, DID YOU PREPARE A SUMMARY OF

03:57:13 22 WHAT YOU FOUND FROM IEEE STANDARDS?

03:57:15 23 A. YES. I THINK IT'S THE NEXT SLIDE.

03:57:18 24 SO HERE, THESE AREN'T ALL PROTOCOLS, SOME OF THESE ARE

03:57:22 25 TERMS FROM WITHIN THE PROTOCOL DOCUMENT. BUT ALL OF THESE ARE

03:57:25 1 PART OF A STANDARD THAT WAS PUBLISHED BY THE IEEE WHICH  
03:57:28 2 OPERATES OUTSIDE OF ANY COMPANY.

03:57:31 3 Q. NOW AFTER YOU COMPLETED ALL OF THE -- THIS REVIEW, DID YOU  
03:57:38 4 ATTEMPT TO PUT TOGETHER ALL OF YOUR FINDINGS INTO ONE PLACE?

03:57:42 5 A. I DID AND IT WAS A LOT OF FUN.

03:57:46 6 Q. OKAY. IF YOU COULD LOOK AT EXHIBIT 9042, PLEASE.

03:58:07 7 A. WHERE WOULD I FIND IT?

03:58:09 8 THE COURT: IT'S THE LAST BINDER, NUMBER 8, IT'S THE  
03:58:11 9 SKINNY ONE.

03:58:14 10 THE WITNESS: THANK YOU, YOUR HONOR.

03:58:19 11 OKAY. I'M WITH YOU.

03:58:22 12 Q. WHAT'S 9042?

03:58:25 13 A. THIS IS AN EXCEL SPREADSHEET WHERE I LISTED ALL 506 OF THE  
03:58:32 14 ASSERTED MULTIWORD COMMANDS. AND IN EACH CASE, I COLORED IN A  
03:58:36 15 CELL, EACH OF THE TERMS IS COLORED, ONE OF THOSE THREE COLORS  
03:58:41 16 UP ON THE PAPER OVER THERE, IT'S EITHER A BROWN, IF IT'S FROM A  
03:58:45 17 LEGACY CLI, BLUE, IF I CONSIDER IT TO BE A COMMON NETWORKING  
03:58:50 18 TERM, AND GREEN, IF IT COMES FROM ONE OF THOSE TWO STANDARDS  
03:58:55 19 BADDIES WE JUST TALKED ABOUT.

03:59:01 20 Q. AND DID DOUBLE CHECK THIS TO CONFIRM THE TERMS WERE FOUND  
03:59:07 21 IN RFC'S, IF THAT'S WHAT YOU INDICATE ON HERE?

03:59:11 22 A. MANY TIMES.

03:59:12 23 MR. FERRALL: YOUR HONOR, AT THIS POINT I WOULD LIKE  
03:59:13 24 TO DISPLAY THIS TO THE JURY.

03:59:16 25 THE COURT: ARE YOU GOING TO MOVE IT INTO EVIDENCE?

03:59:18 1 MR. FERRALL: ULTIMATELY, I WOULD LIKE TO, BUT IF I  
03:59:20 2 CAN AT LEAST USE IT AS A DEMONSTRATIVE AT THIS POINT.  
03:59:23 3 THE COURT: ANY OBJECTION TO IT BEING A DEMONSTRATIVE  
03:59:25 4 AT THIS POINT?  
03:59:25 5 MR. NELSON: NO, YOUR HONOR.  
03:59:26 6 THE COURT: OKAY.  
03:59:26 7 MR. NELSON: THAT'S OKAY.  
03:59:29 8 BY MR. FERRALL:  
03:59:31 9 Q. SO DR. BLACK, I KNOW YOU EXPLAINED THIS BEFORE IT WAS UP  
03:59:35 10 ON THE SCREEN, BUT CAN YOU EXPLAIN TO THE JURY AGAIN WHAT IS  
03:59:41 11 SHOWN HERE.  
03:59:42 12 A. SURE. SO THIS IS AN ALPHABETICAL LISTING, IT'S 506 LINES  
03:59:47 13 LONG BECAUSE EVERY COMMAND THAT'S ASSERTED BY CISCO IS LISTED  
03:59:50 14 HERE.  
03:59:50 15 AND THEN IN EACH CASE, LINE BY LINE, IF A GIVEN COMMAND  
03:59:54 16 TERM LIKE AAA, THAT'S THE FIRST ONE HERE, IF THAT'S FOUND IN AN  
04:00:00 17 ITEF OR IEEE DOCUMENT, I COLORED IT GREEN.  
04:00:03 18 SO THERE IS AN AAA STANDARD IN THE ITEF. AND SO I COLORED  
04:00:08 19 IT GREEN. AND THERE'S ONE REGARDING ACCOUNTING, I COLORED THAT  
04:00:12 20 GREEN AS WELL.  
04:00:13 21 THERE'S SOME THAT ARE BLUE BECAUSE I DIDN'T CONSIDER THEM  
04:00:16 22 TO BE -- I DIDN'T FIND THEM IN ANY STANDARDS DOCUMENT, BUT I  
04:00:22 23 CONSIDER THEM TO BE COMMON ENOUGH TERMS THAT EVERYBODY WOULD  
04:00:24 24 KNOW THEM AND UNDERSTAND THEM.  
04:00:25 25 THERE ARE SOME BROWN ONES THAT ARE FURTHER DOWN. THOSE

04:00:30 1 ARE TAKEN FROM THAT FIRST LIST THAT CORRESPOND TO THAT BROWN  
04:00:34 2 CIRCLE UP ON THE TOP, THE POSTER BOARD OVER THERE.  
04:00:37 3 AND THEN IF I DIDN'T FIND THEM ANYWHERE AND DIDN'T  
04:00:40 4 CONSIDER THEM TO BE COMMON TERMS, I LEFT THEM AS WHITE.  
04:00:43 5 Q. OKAY. SO WE SEE HERE NOW, HERE'S A PAGE WITH MORE BROWN  
04:00:49 6 AND BLUE.  
04:00:54 7 THIS HAS, FOR EXAMPLE, THE "SHOW COMMANDS" YOU FOUND FROM  
04:00:57 8 LEGACY OPERATING SYSTEM; IS THAT RIGHT?  
04:00:59 9 A. TO BE CLEAR, I FOUND THE WORD "SHOW" USED AS A COMMAND IN  
04:01:05 10 THOSE OPERATING SYSTEM, NOT NECESSARILY THE ENTIRE COMMAND  
04:01:08 11 SHOWN HERE.  
04:01:08 12 Q. FAIR ENOUGH. THANK YOU.  
04:01:10 13 AND YOU ARE NOT -- YOU HAVE A NUMBER OF TERMS HERE IN  
04:01:13 14 WHITE, AND THOSE REFLECT THE FACT THAT THESE WERE NOT PRESENT  
04:01:19 15 FROM YOUR INVESTIGATION IN LEGACY OPERATING SYSTEMS OR RFC; IS  
04:01:30 16 THAT RIGHT?  
04:01:30 17 A. RIGHT. YOU CAN SEE ALL STATISTICS, COOLING, POWER,  
04:01:36 18 TEMPERATURE. I MEAN, YOU CAN ARGUE IT'S A JUDGMENT CALL TO  
04:01:41 19 DETERMINE WHETHER THAT'S A TERM THAT EVERYBODY KNOWS OR NOT.  
04:01:43 20 IF I DID, I MADE IT BLUE. IF NOT, I LEFT IT WHITE.  
04:01:48 21 IT WAS A JUDGMENT CALL. I TRIED TO MAKE IT REASONABLE AND  
04:01:50 22 CONSERVATIVE WHEN I MADE THIS CHART.  
04:01:53 23 Q. YOU ARE NOT CLAIMING THAT EVERY WORD FROM CISCO IS FROM AN  
04:01:56 24 RFC OR A PRIOR OPERATING SYSTEM?  
04:01:57 25 A. NO, THERE ARE PLENTY OF WHITE CELLS IN MY CHART HERE.

04:02:01 1 Q. NOW, WERE YOU ASKED TO PROVIDE AN OPINION ON A DOCTRINE  
04:02:08 2 KNOWN AS SCÈNES À FAIRE?  
04:02:09 3 A. YES, I WAS.  
04:02:10 4 Q. OKAY. IF WE COULD JUST PUT THAT SLIDE 22 UP, MR. DAHM.  
04:02:16 5 AND YOU UNDERSTAND THIS IS A LEGAL DOCTRINE; RIGHT.  
04:02:20 6 A. THAT'S WHAT MY UNDERSTANDING IS.  
04:02:22 7 Q. AND THAT'S NOT YOUR SPECIALTY?  
04:02:23 8 A. IT IS DEFINITELY NOT.  
04:02:25 9 Q. BUT YOU UNDERSTAND THAT THIS DOCTRINE SAYS THAT MATERIAL  
04:02:31 10 THAT FLOWS NATURALLY FROM CONSIDERATIONS OR FACTORS THAT ARE  
04:02:38 11 EXTERNAL TO AN AUTHOR'S CREATIVITY SHOULD NOT BE PROTECTED BY  
04:02:42 12 COPYRIGHT.  
04:02:43 13 WAS THAT WHAT YOU FOLLOWED IN ASSESSING THIS?  
04:02:46 14 A. THAT WAS MY UNDERSTANDING, YES.  
04:02:47 15 Q. AND CAN YOU EXPLAIN TO THE JURY WHAT, IF ANY, EXTERNAL  
04:02:53 16 CONSTRAINTS OR CONSIDERATIONS YOU FOUND TO BE PRESENT FOR THE  
04:03:00 17 CISCO ENGINEERS AS THEY WERE DERIVING THESE CLI COMMANDS?  
04:03:04 18 A. RIGHT.  
04:03:05 19 SO I MEAN, IF YOU IMAGINE YOU ARE GOING TO GO OUT AND  
04:03:08 20 CREATE A NEW CLI COMMAND, I MEAN, PROBABLY THE FIRST THING YOU  
04:03:12 21 ARE GOING TO DO IS THINK, WELL, WHAT DOES IT DO, WHAT'S THE  
04:03:16 22 FEATURE THAT I'M TRYING TO DESCRIBE.  
04:03:19 23 AND SO IF YOU WANTED TO DO SOMETHING LIKE CLEAR  
04:03:23 24 SPANNING-TREE COUNTERS, YOU MIGHT MAKE A NEW CLI COMMAND CALLED  
04:03:27 25 CLEAR SPANNING TREE COUNTERS, THAT WOULD MAKE SENSE.

04:03:31 1 YOU PROBABLY WOULDN'T USE "SHOW IP INTERFACE" OR SOMETHING  
04:03:39 2 THAT DOESN'T AT ALL DESCRIBE THE THING YOU ARE GOING TO DO. SO  
04:03:41 3 I THINK THAT'S A CONSTRAINT. TRYING TO BE DESCRIPTIVE, TRYING  
04:03:44 4 TO BE CLEAR, CONCISE. USE ABBREVIATIONS, WHEN IT MAKES SENSE,  
04:03:47 5 IF THEY ARE WELL UNDERSTOOD.

04:03:49 6 WE ARE LAZY PEOPLE, NETWORK ENGINEERS, WE DON'T WANT TO  
04:03:52 7 TYPE MORE THAN WE HAVE TO. SO IF WE CAN ABBREVIATE OR USE  
04:03:55 8 SMALLER TERMS, THAT'S ATTRACTIVE, WE WANT TO DO THAT AS WELL.

04:03:59 9 AND ALSO, IF YOU NOT ADDING THE FIRST CLI COMMAND, THEN  
04:04:03 10 YOU PROBABLY WANT TO MAKE IT FIT IN WITH THE COMMANDS YOU  
04:04:07 11 ALREADY HAVE.

04:04:07 12 AND MR. REMAKER LAST WEEK TALKED A LITTLE BIT ABOUT THE  
04:04:11 13 HIGHLY TECHNICAL ASPECTS OF CISCO'S PARSER THAT MIGHT CONSTRAIN  
04:04:15 14 CHOICES ALONG THOSE LINES AS WELL.

04:04:20 15 Q. DID YOU FIND IN THE EVIDENCE, ANY DOCUMENTS OR OTHER  
04:04:25 16 TESTIMONY THAT SUGGESTED TO YOU THAT THE CISCO ENGINEERS  
04:04:31 17 ACTUALLY FOLLOWED SOME OF THESE CONSTRAINTS AND WERE BOUND BY  
04:04:35 18 SOME OF THESE CONSTRAINTS IN COMING UP WITH THE CLI COMMANDS?

04:04:38 19 A. SURE. I MEAN, I REFERENCED MS. LIU'S USE, TAKING WORDS  
04:04:44 20 DIRECTLY OUT OF THE STANDARDS, THOSE WOULD BE FAMILIAR TO  
04:04:48 21 ENGINEERS.

04:04:48 22 MR. REMAKER, ONCE AGAIN, CITED SOME OF THOSE CONSTRAINTS  
04:04:51 23 AND HE TALKED I THINK AT LENGTH ABOUT THIS DOCUMENT THEY HAVE  
04:04:54 24 CALLED THE PARSER-POLICE MANIFESTO THAT ENSHRINES MANY OF THE  
04:04:59 25 SAME SORTS OF CONCERNs AND CONSTRAINTS THAT I JUST DESCRIBED.

04:05:02 1 Q. OKAY. IF WE COULD LOOK AT EXHIBIT 5175 WHICH IS ALREADY

04:05:08 2 ADMITTED.

04:05:18 3 DR. BLACK, YOU UNDERSTAND THIS WAS A VERSION OF THE

04:05:22 4 PARSER-POLICE MANIFESTO THAT'S IN EVIDENCE ALREADY?

04:05:26 5 A. YES, I UNDERSTAND THAT.

04:05:27 6 Q. AND CAN YOU EXPLAIN TO THE JURY HOW THIS PARSER-POLICE

04:05:33 7 MANIFESTO APPLIES TO YOUR SCÈNES À FAIRE OPINION?

04:05:39 8 A. I MEAN THIS THING IS -- HAS, AMONG OTHER THINGS, ADVICE ON

04:05:44 9 HOW TO MAKE A GOOD CLI COMMAND THAT FITS IN WITH WHAT EXISTS

04:05:49 10 ALREADY AND MAKES SENSE TO THE USERS AND FOLLOWS THOSE

04:05:52 11 CONSTRAINTS THAT I JUST MENTIONED A MOMENT AGO.

04:05:54 12 Q. OKAY. IF WE COULD GO TO THE GUIDELINES --

04:06:00 13 AND MR. DAHM, I THINK IT'S ON THE SECOND PAGE OR THIRD

04:06:03 14 PAGE, MAYBE.

04:06:14 15 SO I GUESS, DR. BLACK, THIS LOOKS LIKE PART OF THE

04:06:17 16 GUIDELINES SECTION. IS THERE ONE IN PARTICULAR -- IF YOU COULD

04:06:25 17 LOOK IN YOUR BINDER.

04:06:27 18 A. I'M SORRY, WHAT WAS THE EXHIBIT NUMBER?

04:06:29 19 Q. AH. SORRY. 5175.

04:06:45 20 A. OKAY. I HAVE IT.

04:06:51 21 Q. SO THE QUESTION, DR. BLACK, IS WERE THERE PARTICULAR

04:06:57 22 GUIDELINES OR ASPECTS OF THE PARSER-POLICE MANIFESTO THAT YOU

04:07:00 23 FOUND RELEVANT TO THE SCÈNES À FAIRE OPINION?

04:07:03 24 A. WELL, I THINK IN SOME SENSE THEY ALL ARE, INSOFAR AS THEY

04:07:07 25 ARE THE GIVING ADVICE ON WHAT TO DO AND WHAT NOT TO DO.

04:07:11 1 WE COULD TAKE, FOR EXAMPLE, PERHAPS BULLET SIX, WHICH IS I  
04:07:23 2 THINK IS -- IT'S A LITTLE BIT FADED ON MY COPY. YEAH, THIS I  
04:07:27 3 THINK IS A GOOD EXAMPLE.  
04:07:28 4 Q. SO CAN YOU EXPLAIN WHAT YOU UNDERSTOOD THIS TO MEAN?  
04:07:32 5 A. CAN I READ THE FIRST SENTENCE INTO THE RECORD?  
04:07:34 6 Q. SURE.  
04:07:35 7 A. SO IT SAYS, WHEN NAMING A COMMAND, TRY TO PICK NAMES THAT  
04:07:38 8 WOULD BE FAMILIAR TO PEOPLE IN THE INDUSTRY. AND THEN THEY GO  
04:07:42 9 TO GIVE SOME EXAMPLES.  
04:07:44 10 WELL, I THINK I WAS TRYING TO CAPTURE THAT SAME ADVICE A  
04:07:47 11 MOMENT AGO. IF YOU ARE GOING TO USE MTU, ALTHOUGH PEOPLE WHO  
04:07:51 12 DON'T WORK IN NETWORKS, THAT MIGHT LOOK COMPLETELY MEANINGLESS,  
04:07:57 13 TO SOMEONE THAT WORKS IN NETWORKING THAT MEANS MAXIMUM  
04:08:00 14 TRANSMISSION UNIT, AND IT WOULD BE FAMILIAR.  
04:08:02 15 AND I THINK IT MAKES A LOT OF SENSE BOTH FOR BREVITY AND  
04:08:04 16 CLARITY AND FAMILIARITY TO USE A TERM LIKE THAT.  
04:08:06 17 Q. OKAY.  
04:08:07 18 AND BASED UPON YOUR REVIEW OF ALL OF THE EVIDENCE IN THIS  
04:08:14 19 CASE, WHAT CONCLUSION, IF ANY, DID YOU REACH CONCERNING THE  
04:08:18 20 APPLICABILITY OF THE SCÈNES À FAIRE DOCTRINE TO THE ASSERTED  
04:08:25 21 CLI ELEMENTS?  
04:08:25 22 A. I THINK GIVEN THE LARGE NUMBER OF CONSTRAINTS TO DESCRIBE  
04:08:28 23 THE FEATURE YOU ARE IMPLEMENTING AND TO FOLLOW ALL OF THOSE  
04:08:31 24 OTHER GUIDELINES THAT WERE SET FORTH IN THIS DOCUMENT AND  
04:08:34 25 ACCORDING TO THE TESTIMONY WE'VE HEARD, THAT REALLY, THE

04:08:37 1 COMMAND THAT YOU END UP WITH FLOWS PRIMARILY FROM SOURCES AND  
04:08:42 2 SUBJECT TO CONSTRAINTS OUTSIDE OF THE AUTHOR'S CREATIVITY.  
04:08:49 3 Q. ALL RIGHT.  
04:08:50 4 NOW DR. BLACK, I WOULD LIKE TO TURN TO WHAT I THINK YOU  
04:08:53 5 IDENTIFIED IN THE BEGINNING AS THE SECOND CATEGORY OF YOUR  
04:08:57 6 ANALYSIS, AND THAT WAS FAIR USE; RIGHT?  
04:09:00 7 A. YES, SIR.  
04:09:01 8 Q. ARE YOU READY FOR THAT?  
04:09:03 9 A. I WILL DO MY BEST.  
04:09:04 10 Q. AND IF WE COULD JUST CALL UP SLIDE 25, PLEASE. YOU REFER  
04:09:13 11 TO FOUR FAIR USE FACTORS IN THE BEGINNING.  
04:09:16 12 DO YOU RECOGNIZE THESE AS THE FACTORS YOU WERE ASKED TO  
04:09:20 13 CONSIDER?  
04:09:20 14 A. I THINK THEY ARE SHORTENED VERSIONS, BUT YES.  
04:09:24 15 Q. AND IF WE COULD JUST TICK THROUGH AGAIN, WE WILL GO INTO  
04:09:27 16 SOME DETAIL, BUT AT A SUMMARY LEVEL, WHAT DID YOU FIND ON EACH  
04:09:31 17 OF THESE FACTORS?  
04:09:33 18 A. YOU ARE ASKING FOR MY FINDINGS?  
04:09:35 19 Q. YES, YOUR FINDINGS AS TO EACH OF THEM.  
04:09:38 20 A. SO THE FIRST ONE, PURPOSE AND CHARACTER OF THE USE.  
04:09:42 21 THAT ASKS: IS ARISTA, IN THIS CONTEXT, IS ARISTA  
04:09:47 22 TRANSFORMATIVE? AND I FOUND IT WAS, IN FACT, HIGHLY  
04:09:50 23 TRANSFORMATIVE, AS I MENTIONED EARLIER.  
04:09:52 24 NATURE OF THE WORK. HERE THE WORK MEANS THE CISCO CLI.  
04:09:55 25 CISCO USER INTERFACE. WHAT IS THE NATURE OF IT? AND AS I SAID

04:10:01 1 EARLIER, I FOUND IT TO BE A FACTUAL FUNCTIONAL OBJECT.

04:10:05 2 AMOUNT AND SUBSTANTIALITY OF THE PORTION USED. THAT'S

04:10:11 3 ASKING WHAT PROPORTION OF THE ACCUSED ELEMENTS, WHAT IS THAT

04:10:15 4 PROPORTION IN RELATION TO THE WORK AS A WHOLE? IN OTHER WORDS,

04:10:17 5 THE ENTIRE USER INTERFACE, AND IN MY VIEW, INCLUDING ITS

04:10:23 6 IMPLEMENTING SOURCE CODE.

04:10:25 7 AND I FOUND THAT ARISTA'S USE CONSTITUTED A VERY SMALL

04:10:27 8 FRACTION OF THE OVERALL CISCO USER INTERFACE.

04:10:30 9 AND THEN ON MARKET HARM, THAT'S MORE OF SOMETHING FOR A

04:10:34 10 MARKETING OR AN ANALYSIS OF DAMAGES EXPERTS, SOMETHING THAT I'M

04:10:38 11 NOT AN EXPERT IN.

04:10:39 12 SO I DIDN'T HAVE A LOT TO SAY THERE OTHER THAN WHAT I

04:10:43 13 MENTIONED BEFORE THAT ALL THESE OTHER VENDORS ARE USING THE

04:10:48 14 SAME CLI COMMANDS AND ELEMENTS THAT ARE ACCUSED HERE. THAT, I

04:10:54 15 THINK, HAS SOME INFLUENCE ON WHAT THE HARM TO THE MARKET COULD

04:10:56 16 THEREFORE BE.

04:10:57 17 Q. AND ON THAT LAST POINT, YOU UNDERSTAND THAT YOUR FINDINGS

04:11:00 18 REGARDING THE WIDESPREAD USAGE, THAT WAS SOMETHING THAT ANOTHER

04:11:05 19 PERSON MAY COME TO TESTIFY ON BEHALF OF ARISTA TO TALK ABOUT

04:11:09 20 MARKET HARM?

04:11:10 21 A. IT'S MY UNDERSTANDING THERE IS ANOTHER EXPERT WHO IS AN

04:11:13 22 EXPERT ON THIS TOPIC OF MARKET HARM, AND SHE RELIED UPON MY

04:11:18 23 ANALYSIS TO INFORM HER ULTIMATE DECISION AND OPINION.

04:11:22 24 Q. ALL RIGHT. SO IF WE COULD TALK ABOUT THE FIRST FACTOR,

04:11:28 25 THE PURPOSE AND CHARACTER OF THE USE.

08:24:15 1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
3 SAN JOSE DIVISION  
4  
5 CISCO SYSTEMS, INC., ) CV-14-5344-BLF  
6 )  
7 PLAINTIFF, ) SAN JOSE, CALIFORNIA  
VS. )  
8 ) DECEMBER 7, 2016  
9 ARISTA NETWORKS, INC., ) VOLUME 10  
10 DEFENDANT ) PAGES 2158-2405  
----- )  
11  
12 TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE BETH LABSON FREEMAN  
UNITED STATES DISTRICT JUDGE  
13 A P P E A R A N C E S:  
14 FOR THE PLAINTIFF: QUINN, EMANUEL, URQUHART & SULLIVAN  
15 BY: DAVID A. NELSON  
500 WEST MADISON STREET, SUITE 2450  
CHICAGO, IL 60661  
16  
17 FOR THE PLAINTIFF: QUINN, EMANUEL, URQUHART & SULLIVAN  
18 BY: SEAN PAK  
50 CALIFORNIA STREET, 22ND FLOOR  
SAN FRANCISCO, CALIFORNIA 94111  
19  
20  
21  
22 APPEARANCES CONTINUED ON NEXT PAGE  
23 OFFICIAL COURT REPORTER: SUMMER FISHER, CSR, CRR  
24 CERTIFICATE NUMBER 13185  
25 PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY  
TRANSCRIPT PRODUCED WITH COMPUTER

08:35:39 1 MARKETING AS INDUSTRY STANDARD.

08:35:42 2 AT THE END WHERE HE DEFINES INDUSTRY STANDARD --

08:35:45 3 THE COURT: SURE.

08:35:46 4 WELL, I WASN'T SUGGESTING THAT I WOULD THROW IT ALL OUT,

08:35:48 5 DON'T GET ME WRONG. BUT IT WAS -- I WAS ALSO CONCERNED. YOU

08:36:11 6 KNOW, IN TRIAL YOU'VE SPENT, BOTH PARTIES, AND PERHAPS HAVE

08:36:15 7 SPENT TIME DISCUSSING INDUSTRY STANDARDS AND USING IEEE AND

08:36:22 8 ITEF AS EXAMPLES OF TRUE INDUSTRY STANDARDS. THIS WITNESS IS

08:36:31 9 NOT TALKING ABOUT THAT, IT'S A MUCH BROADER DEFINITION.

08:36:33 10 SO THE CONFUSION I SEE, IF HE SAID IT WAS KNOWN IN THE

08:36:37 11 INDUSTRY, IT'S COMMON IN THE INDUSTRY, THAT'S ONE THING. IT'S

08:36:40 12 THE USE OF THE WORD "STANDARD."

08:36:42 13 AND THAT'S WHY THE OBJECTION IS IN VIOLATION OF MY RULING

08:36:44 14 ON THE MOTION IN LIMINE, IS IT'S GENERALLY IN THAT UMBRELLA OF

08:36:48 15 WHY I DIDN'T ALLOW YOU TO GO FORTH WITH DR. BLACK'S USE OF

08:36:53 16 DE FACTO STANDARD, WHICH IS REALLY WHAT, I SUPPOSE, WHAT HE'S

08:36:58 17 TALKING ABOUT.

08:36:58 18 AND SOME OF THEM ARE TRUE INDUSTRY STANDARDS, THAT'S THE

08:37:01 19 PROBLEM. SO THE BOUNDARIES OF INDUSTRY STANDARD GET SO

08:37:07 20 EXPANDED OR DISAPPEAR, ACTUALLY.

08:37:09 21 AND SO THEN WE HAVE TO GO THROUGH LINE-BY-LINE AND SEE

08:37:14 22 WHAT WE'VE --

08:37:16 23 MR. VAN NEST: WHY DON'T WE DO THIS, YOUR HONOR:

08:37:18 24 WE UNDERSTAND YOUR CONCERN, THERE'S A LOT IN HERE THAT'S

08:37:22 25 SIMPLY THEIR MARKETING PRACTICES THEIR DEVELOPMENT OF THE

08:37:26 1 COMMANDS, WE WILL PULL OUT WHERE HE'S TALKING ABOUT  
08:37:33 2 DEFINITIONALLY, WHERE HE'S SAYING YES, THAT'S INDUSTRY  
08:37:35 3 STANDARD, AND PULL IT OUT AND PRESENT IT, BUT WE WOULD LIKE TO  
08:37:37 4 PLAY IT TODAY, AND I GET YOUR CONCERN AND WE WILL PULL IT  
08:37:40 5 IMMEDIATELY AND SHARE IT WITH THEM. WE CAN GO LINE-BY-LINE,  
08:37:44 6 BUT IT SEEMS TO ME THIS WOULD BE A LOT SIMPLER.

08:37:46 7 THE COURT: AND MR. VAN NEST, ANOTHER THING THAT IS  
08:37:49 8 OF CONCERN TO ME IS THAT, OF COURSE YOU ARE PRESENTING THIS TO  
08:37:52 9 THE JURY, BUT THERE'S NO SENSE OF A TIMELINE HERE.

08:37:56 10 AND I COULDN'T TELL -- I DON'T KNOW HOW YOU ARE GOING TO  
08:38:01 11 USE THE CATO DEPOSITION IF IT APPLIES TO YOUR FAIR USE OR IF  
08:38:05 12 IT'S --

08:38:06 13 MR. VAN NEST: IT CERTAINLY DOES.

08:38:08 14 THE COURT: AND SO THE ISSUE IS: DOES THE ISSUE OF  
08:38:11 15 WHETHER IT PREDATES OR POST-DATES CISCO USER INTERFACE.

08:38:16 16 MR. VAN NEST: I THINK HIS EMPLOYMENT WILL CLEAR THAT  
08:38:18 17 UP, BUT I DON'T BELIEVE ANY OF THESE PREDATES THE 80'S. THIS  
08:38:23 18 IS CONTEMPORARY.

08:38:24 19 THE COURT: OKAY. THEN THE TIMELINE IS NOT  
08:38:26 20 IMPORTANT, AND I APPRECIATE THAT.

08:38:35 21 THEN WHEN WE GOT TO PAGE 65, IT WAS MY INCLINATION TO -- I  
08:38:41 22 THINK THESE THEN ARE DIFFERENT, 65, 69 AND 71, I WAS GOING --  
08:38:46 23 PREPARED TO OVERRULE ALL OF THOSE OBJECTIONS.

08:38:52 24 MS. MCCLOSKEY: 65, YOUR HONOR? I'M SORRY.

08:38:56 25 THE COURT: IT'S THE OBJECTIONS ON PAGE 65, 69 AND

09:39:45 1 YOUR TESTIMONY AND YOUR OPINIONS.

09:39:47 2 SO FIRST, YOU TALKED ABOUT ORIGINALITY IN THE BEGINNING;

09:39:51 3 RIGHT? DO YOU RECALL THAT.

09:39:52 4 A. YES, I DID.

09:39:53 5 Q. AND SO LET'S LAY SOME PARAMETERS THERE. WHEN YOU TALKED

09:39:57 6 ABOUT ORIGINALITY, YOU ARE GOING BACK TO THE TIME OF

09:40:00 7 CONFIGURATION OF THE COMMANDS, YOU UNDERSTAND THAT; RIGHT?

09:40:02 8 A. WHEN I TALKED ABOUT ORIGINALITY, I WAS GOING BACK TO 1986.

09:40:08 9 SOME OF THE COMMANDS WEREN'T CREATED UNTIL VERY RECENTLY.

09:40:10 10 Q. RIGHT. UNDERSTOOD.

09:40:11 11 SO WITH RESPECT TO THOSE OPINIONS, AND IF WE PUT UP, WE

09:40:15 12 CAN JUST PUT UP A PAGE FROM 9042, JUST TO REMIND EVERYBODY WHAT

09:40:19 13 YOU WERE TALKING ABOUT, I THINK THAT'S THE DEMONSTRATIVE YOU

09:40:21 14 USED.

09:40:22 15 SO YEAH, THIS IS THE FIRST PAGE. SO WHAT YOU WERE DOING

09:40:26 16 THERE, IF I UNDERSTOOD YOU CORRECTLY IS, YOU WENT THROUGH AND

09:40:32 17 LOOKED FOR FIRST LEGACY COMMAND TERMS; IN OTHER WORDS,

09:40:37 18 INDIVIDUAL TERMS THAT YOU SAW WERE USED IN OTHER SYSTEMS;

09:40:40 19 RIGHT?

09:40:40 20 A. YES.

09:40:41 21 Q. OKAY. THEN THAT'S THE BROWN STUFF?

09:40:43 22 A. THAT'S THE BROWN STUFF.

09:40:44 23 Q. AND I THINK THAT'S THE APPROPRIATE -- I MEAN, I'M SORRY,

09:40:47 24 THAT'S JUST THE WAY I TALK. I'M NOT TRYING TO DENIGRATE.

09:40:52 25 SO THEN THE NEXT ONE, YOU SAY INDUSTRY STANDARD TERM;

09:40:57 1 RIGHT?

09:40:57 2 A. RIGHT.

09:40:58 3 Q. OKAY. SO LET'S JUST CLARIFY THERE.

09:41:00 4 WHEN YOU ARE TALKING ABOUT INDUSTRY STANDARD, IN THIS

09:41:03 5 CONTEXT YOU ARE TALKING ABOUT A FORMAL INDUSTRY STANDARD BODY;

09:41:07 6 RIGHT?

09:41:07 7 A. YEAH, I TRIED TO, IN THE DESCRIPTION, BE CLEAR ABOUT THAT

09:41:11 8 FACT.

09:41:11 9 Q. RIGHT. AND THOSE ARE THE ONES YOU MARKED GREEN?

09:41:14 10 A. YES, SIR.

09:41:14 11 Q. AND AGAIN, WHAT YOU WERE DOING IS GOING THROUGH MANUALS OR

09:41:18 12 RFC'S, THINGS LIKE THAT?

09:41:20 13 A. STANDARDS DOCUMENTS.

09:41:22 14 Q. STANDARDS DOCUMENTS, THAT'S A GREAT WAY TO PHRASE IT.

09:41:27 15 YOU WERE GOING THROUGH STANDARDS DOCUMENTS THAT YOU SAY

09:41:30 16 PREDATED AND LOOKING FOR INDIVIDUAL TERMS IN THERE?

09:41:34 17 A. CORRECT.

09:41:34 18 Q. AND THEN YOU HAVE THE -- AND THAT'S THE GREEN, I THINK?

09:41:37 19 A. THAT'S THE GREEN, YES.

09:41:38 20 Q. THEN YOU HAVE THE BLUE, WHICH YOU SAY ARE COMMON INDUSTRY

09:41:43 21 TERMS; IS THAT RIGHT?

09:41:44 22 A. CORRECT. I THINK I MAY HAVE WRITTEN COMMON NETWORKING

09:41:47 23 TERMS ON THE CHART THERE, BUT YES.

09:41:49 24 Q. BUT YOU'RE EQUATING THOSE -- WHEN YOU ARE SAYING INDUSTRY

09:41:53 25 IN 9042, YOU MEAN THE NETWORKING INDUSTRY; RIGHT?

09:41:56 1 A. YES, SIR.

09:41:57 2 Q. AND I THINK WHEN YOU DESCRIBED THE BLUE ON YOUR DIRECT

09:42:01 3 TESTIMONY, YOU SAY THAT'S A BIT MORE OF A JUDGMENT CALL; RIGHT?

09:42:04 4 A. I THINK THAT'S FAIR.

09:42:04 5 Q. SO IN OTHER WORDS, WHETHER SOMETHING WAS COMMON BACK AT

09:42:08 6 THE TIME OF CONFIGURATION OF THESE COMMANDS, IT'S A BIT MORE OF

09:42:11 7 A JUDGMENT CALL; RIGHT?

09:42:12 8 A. SOME ENGINEERS MIGHT DISAGREE WITH CERTAIN TERMS, SURE.

09:42:15 9 Q. AND THEN IF WE GO BACK ON THE INDUSTRY STANDARD TERMS, AND

09:42:23 10 WE LOOKED AT A NUMBER OF STANDARDS DOCUMENTS, THERE ARE I

09:42:26 11 NUMBER OF DIFFERENT WORDS THAT COULD BE USED; RIGHT?

09:42:28 12 A. I'M NOT SURE I UNDERSTAND.

09:42:30 13 Q. MEANING, YOU KNOW, SOMETIMES YOU MIGHT SPELL OUT THE WORD,

09:42:34 14 SOMETIMES YOU MIGHT HAVE AN ABBREVIATION, THERE ARE DIFFERENT

09:42:36 15 THINGS THAT WOULD TELL A NETWORKING ENGINEER BACK AT THAT TIME

09:42:45 16 WHAT A PARTICULAR FUNCTIONALITY IS; RIGHT?

09:42:47 17 A. I MEAN, IF YOU WANT TO TAKE A PARTICULAR EXAMPLE, IP, I

09:42:51 18 THINK THAT'S BEEN TALKED ABOUT. YOU COULD USE IP, YOU COULD

09:42:54 19 SPELL OUT INTERNET PROTOCOL.

09:43:00 20 I DON'T THINK I'VE OF EVER SEEN THAT DONE BUT IT WOULD BE

09:43:03 21 DESCRIPTIVE TO AN ENGINEER.

09:43:04 22 Q. I THINK SOMEBODY SAID IPV3?

09:43:07 23 A. IT WOULD BE IPV4.

09:43:09 24 Q. OKAY. I GOT THE NUMBER WRONG, THANKS FOR CORRECTING ME.

09:43:13 25 BUT THAT WOULD BE ANOTHER ONE?

09:43:14 1 A. I DIDN'T SEE IT, BECAUSE IT EXISTED A LONG TIME BEFORE  
09:43:18 2 IPV6 CAME ALONG, BUT YOU COULD COME BACK AND CHANGE YOUR  
09:43:22 3 TECHNOLOGY TO AS THE V4 AND PEOPLE WOULD KNOW WHAT THAT MEANT.  
09:43:25 4 Q. SO JUST SO WHEN YOU ARE GOING THROUGH AND DOING THAT  
09:43:28 5 ANALYSIS ON ORIGINALITY, YOU DIDN'T OFFER ANY OPINION THAT ANY  
09:43:31 6 OF THE ACTUAL COMMAND TERMS WERE FOUND IN ANY OF THESE  
09:43:35 7 DOCUMENTS YOU LOOKED AT, RIGHT? THE COMMANDS THEMSELVES?  
09:43:38 8 A. YOU SAID COMMAND TERMS AT FIRST, SIR?  
09:43:41 9 Q. THEN I MISSPOKE, AND I SHOULD CORRECT THAT SO THAT WE HAVE  
09:43:44 10 A CLEAN RECORD HERE.  
09:43:47 11 YOU DIDN'T FIND THAT ANY OF THE 506 ASSERTED COMMANDS THAT  
09:43:50 12 WE HAVE IN THE CASE, WERE FOUND IN ANY OF THE PRE-EXISTING  
09:43:55 13 DOCUMENT; RIGHT?  
09:43:56 14 A. WELL, IF YOU LOOK HERE, SOME OF THESE ARE A SINGLE WORD,  
09:44:00 15 OR AT LEAST IF YOU CONSIDER THE HYPHENATION TO COMBINE THEM  
09:44:04 16 INTO A SINGLE WORD, ADDRESS FAMILY, AND AGGREGATE ADDRESS, I  
09:44:08 17 DID FIND, PERHAPS WITHOUT THE HYPHEN.  
09:44:10 18 AND SINCE THAT'S THE ENTIRETY OF THE COMMAND, AS WRITTEN,  
09:44:13 19 THEN IN THAT CASE I DID FIND THE ENTIRE COMMAND.  
09:44:18 20 Q. OKAY. WITH RESPECT TO ANY OF THE OTHERS, YOU DIDN'T OFFER  
09:44:23 21 ANY OPINIONS, CORRECT?  
09:44:24 22 A. I DID NOT.  
09:44:24 23 Q. SO WHAT YOU DID IS WENT THROUGH AND FOUND INDIVIDUAL WORDS  
09:44:29 24 AND SAID HEY, THESE WORDS I'VE SEEN BEFORE; RIGHT, THAT'S THE  
09:44:33 25 OWNING OPINION YOU ARE OFFERING ON THAT; RIGHT?

09:44:35 1 A. I WOULD SAY MORE THAN I'VE SEEN BEFORE, I'M SAYING THEY  
09:44:39 2 ACTUALLY APPEAR, FOR THE GREEN ONES, IN THE STANDARDS  
09:44:42 3 DOCUMENTS.

09:44:42 4 Q. RIGHT. BUT YOU WOULD AGREE WITH ME -- LET'S TAKE A BOOK,  
09:44:47 5 FOR EXAMPLE. ANYBODY CAN WRITE A BOOK. IF I WENT BACK AND  
09:44:50 6 LOOKED IN A DICTIONARY, I WOULD FIND ALL THOSE WORDS; RIGHT?

09:44:52 7 A. SURE, BUT WE ARE NOT LOOKING AT A DICTIONARY WHICH IS ALL  
09:44:57 8 IN ENGLISH, WE ARE LOOKING AT A VERY SPECIFIC, LIMITED SET OF  
09:44:59 9 INDUSTRY STANDARD DOCUMENTS.

09:45:00 10 Q. WE COULD LIMIT IT A LITTLE BIT MORE. I MEAN, WE COULD  
09:45:02 11 BEING TALKING ABOUT A SPORT; RIGHT? LET'S JUST SAY IT'S A  
09:45:05 12 SOCCER MATCH. THEN I HAVE A LIMITED SETS OF WORDS, BUT I COULD  
09:45:08 13 PROBABLY FIND ALL OF THOSE WORDS THAT ANYBODY USES TO DESCRIBE  
09:45:12 14 A SOCCER MATCH IN SOME PRE-EXISTING BOOKS; RIGHT?

09:45:15 15 A. PERHAPS.

09:45:15 16 Q. YEAH. I MEAN, USUALLY WHEN WE WRITE THINGS, WE WRITE  
09:45:18 17 THINGS USING PRE-EXISTING WORDS; RIGHT?

09:45:21 18 A. RIGHT. BUT I WOULD SAY SOME OF THESE REALLY AREN'T EVEN  
09:45:24 19 WORDS.

09:45:24 20 Q. WELL, RIGHT, BECAUSE SOME OF THEM YOU LEFT WHITE, WHICH  
09:45:27 21 MEANS WITH THOSE COMMANDS CISCO, JUST MADE THOSE UP; RIGHT?

09:45:30 22 A. NO, THAT'S NOT WHAT IT MEANS.

09:45:32 23 Q. WELL, IT MEANS IT'S NOT COMMON; RIGHT?

09:45:37 24 A. YES.

09:45:37 25 Q. IT MEANS YOU DIDN'T FIND IT IN ANY INDUSTRY STANDARD

09:45:43 1 DOCUMENTS?

09:45:43 2 A. CORRECT.

09:45:44 3 Q. AND IT MEANS IT'S NOT A LEGACY COMMAND TERM; RIGHT?

09:45:47 4 A. CORRECT.

09:45:47 5 Q. SO NOW I WANT TO TALK A LITTLE BIT THEN, JUST SO THAT WE

09:45:51 6 ARE ALL CLEAR, TO DISTINGUISH THE, WHAT YOU TALKED ABOUT THE

09:45:58 7 USAGE OF A NUMBER OF COMMANDS; RIGHT? THAT WAS THE SECOND PART

09:46:01 8 OF YOUR TESTIMONY?

09:46:02 9 A. NOT RELEVANT TO THE SCREEN WE ARE LOOKING AT.

09:46:04 10 Q. THAT'S EXACTLY WHAT I WANT TO ESTABLISH. SO WHEN YOU

09:46:09 11 TALKED ABOUT USAGE OF COMMANDS TO OTHER FOLKS THAT ALL COMES

09:46:13 12 AFTER CISCO?

09:46:13 13 A. AFTER CISCO.

09:46:14 14 Q. SO NOBODY SHOULD GET CONFUSED THAT YOU ARE OFFERING THE

09:46:17 15 OPINION THAT ALL OF THOSE CAME BEFORE CISCO CAME UP WITH THE

09:46:20 16 COMMAND TERMS OR THE COMMAND NAMES THAT ARE AT ISSUE HERE?

09:46:24 17 A. NO, I HOPE I WAS CLEAR ON THAT POINT.

09:46:26 18 Q. OKAY. SO NOW ONE THING, YOU WERE HERE FOR SOME OF THE

09:46:32 19 TESTIMONY OF THE CISCO ENGINEERS; RIGHT?

09:46:33 20 A. YES, I WAS.

09:46:34 21 Q. AND YOU HEARD THIS IDEA ABOUT THE SEQUENCING OF THE TERMS;

09:46:39 22 RIGHT?

09:46:39 23 A. I'M VERY FAMILIAR WITH THAT IDEA, SURE.

09:46:41 24 Q. RIGHT. AND YOU DIDN'T -- I DIDN'T HEAR YOU ADDRESS THAT

09:46:45 25 IN YOUR DIRECT TESTIMONY?

09:46:48 1 A. ONLY IN THE SENSE THAT WHEN I TALKED ABOUT SOME OF THE  
09:46:55 2 CONSTRAINTS, I TALKED ABOUT CONSISTENCY WITH PRE-EXISTING  
09:46:59 3 COMMANDS SO THAT WOULD GO TO THE ORDERING OF THE TERMS.  
09:47:01 4 Q. THAT'S A GOOD ONE. SO LET'S TALK WITH THAT CONSTRAINT  
09:47:03 5 BEFORE I GET ON TO THE OTHER POINT, AND NOW THAT YOU ARE THERE.  
09:47:07 6 SO THAT CONSTRAINT IS ACTUALLY AN INTERNAL CONSTRAINT;  
09:47:11 7 RIGHT?  
09:47:11 8 A. I'M NOT SURE WHAT YOU MEAN BY "INTERNAL."  
09:47:13 9 Q. YOU REFERRED TO IT AS A CONSTRAINT, BUT THAT'S SOMEBODY  
09:47:16 10 THAT COMES ALONG AND IS TRYING TO MAKE THEIR COMMAND, WHATEVER  
09:47:20 11 THEY ARE WRITE BEING, CONSISTENT WITH THE EXISTING USER  
09:47:22 12 INTERFACE; RIGHT?  
09:47:22 13 A. I MEAN, LET'S TAKE "SHOW," FOR EXAMPLE, SINCE THAT'S BEEN  
09:47:27 14 TALKED ABOUT QUITE A BIT.  
09:47:29 15 I THINK THAT WHEN MR. LOUGHEED PUT "SHOW" AS THE FIRST  
09:47:32 16 WORD, HE WAS FOLLOWING SOME BEHAVIOR, SOME STANDARD -- NOT  
09:47:40 17 STANDARD, I SHOULDN'T USE THE WORD, SOME ORDERING AND USAGE  
09:47:44 18 THAT HE WAS FAMILIAR WITH FROM TOPS 20.  
09:47:46 19 AND THEN, YES, AFTER THAT TIME, TO BE CONSISTENT, YOU  
09:47:49 20 WOULD NEVER WANT TO PUT "SHOW" IN THE MIDDLE OF YOUR COMMAND OR  
09:47:53 21 AT THE END OF YOUR COMMAND, BECAUSE THE THOUSAND MORE "SHOW  
09:47:57 22 COMMANDS" YOU KEEP THAT CONVENTION AND YOU PUT IT FIRST.  
09:47:59 23 Q. RIGHT. BUT THAT CONSISTENCY YOU ARE JUST REFERRING TO  
09:48:01 24 NOW, THAT'S CONSISTENCY WITH THE EXISTING CISCO USER INTERFACE,  
09:48:04 25 CORRECT?

09:48:05 1 A. AND CONSISTENCY WITH ALL THE PRECEDING CLI'S THAT DID THE  
09:48:08 2 SAME THING, AND THAT'S WHAT ENGINEERS WOULD EXPECT.

09:48:11 3 Q. OKAY. WELL, THERE ARE MANY TIMES WHERE WE SAW EXAMPLES OF  
09:48:16 4 HIERARCHIES THAT HAD NOTHING TO DO WITH PRE-EXISTING SYSTEMS,  
09:48:19 5 CORRECT?

09:48:20 6 A. I DON'T KNOW. I WOULDN'T SAY NOTHING, BUT THEY WERE LESS  
09:48:23 7 SIMILAR THAN THE SHOW COMMAND.

09:48:24 8 Q. RIGHT. AND SO YOU ARE NOT SAYING, SIR, LET'S SAY SOMEBODY  
09:48:33 9 WRITES A BOOK AND IT'S GOT SOME CHARACTER IN IT; RIGHT?

09:48:36 10 A. YOU MEAN LIKE AN ALPHABETICAL CHARACTER.

09:48:38 11 Q. NO, NO, NO, NOT THAT KIND OF CHARACTER. LIKE A BRITISH  
09:48:42 12 SPY. AND HE'S MAKING MARTINIS, AND THEY ARE SHAKEN AND NOT  
09:48:48 13 STIRRED, AND HE'S GOT A NUMBER LIKE 007?

09:48:51 14 A. I'M WITH YOU NOW.

09:48:52 15 Q. AND SOMEBODY, THE SAME GUY, WRITES THE SECOND BOOK IN THAT  
09:49:02 16 SERIES AND HE USES THE SAME CHARACTER; RIGHT?

09:49:04 17 A. SURE.

09:49:04 18 Q. YOU ARE NOT SAYING THAT THE SECOND TIME HE WROTE THAT,  
09:49:07 19 THAT HE WAS EXTERNALLY CONSTRAINED, ARE YOU?

09:49:10 20 A. I MEAN, IT'S FAIRLY HYPOTHETICAL, AND I'M NOT AN EXPERT ON  
09:49:15 21 NOVELS AND SPIES, BUT I ASSUME THAT IF, YOU KNOW, YOU ARE  
09:49:19 22 WRITING A BOOK, THERE'S PROBABLY A MIXTURE OF EXTERNAL  
09:49:23 23 CONSTRAINTS AND INTERNAL CONSTRAINTS.

09:49:25 24 Q. BUT YOU ARE NOT OFFERING US THE OPINION THAT, IN THAT  
09:49:28 25 EXAMPLE, THAT BECAUSE SOMEBODY WANTED TO BE CONSISTENT WITH

09:49:31 1 WHAT THEY HAD ALREADY DONE, THAT THERE'S NO PROTECTION FOR THE  
09:49:34 2 SECOND BOOK; RIGHT?

09:49:35 3 A. I COULDN'T OFFER AN OPINION LIKE THAT.

09:49:38 4 Q. IT DOESN'T MAKE ANY SENSE?

09:49:40 5 A. IT SOUNDS LIKE A LEGAL OPINION.

09:49:42 6 Q. BUT IT DOESN'T MAKE ANY SENSE ANYWAY; RIGHT?

09:49:45 7 A. I CAN'T HELP YOU THERE, SIR.

09:49:47 8 Q. NOW I JUST WANT TO TALK ABOUT THIS SEQUENCING.

09:49:50 9 YOU HEARD THE TESTIMONY THAT PART OF THE -- THE SEQUENCING  
09:49:57 10 WAS IMPORTANT HERE BECAUSE THAT WAS AN ATTEMPT BY THE ENGINEERS  
09:50:00 11 TO DETERMINE WHETHER TO CREATE A NEW HEIRARCHY OR PUT IT INTO  
09:50:03 12 AN EXISTING HIERARCHY, FOR EXAMPLE; RIGHT?

09:50:05 13 A. YES.

09:50:05 14 Q. AND YOU AGREE WITH THAT, YOU DON'T DISPUTE THAT TESTIMONY;  
09:50:08 15 RIGHT?

09:50:08 16 A. THAT'S -- THAT ONE OF THE THINGS YOU DECIDE FOR THE NEW  
09:50:12 17 COMMAND IS CHOOSING A HIERARCHY IN WHICH IT WOULD BE PLACED?

09:50:16 18 Q. OR WHETHER TO CREATE A NEW HIERARCHY; RIGHT?

09:50:21 19 A. SURE.

09:50:22 20 Q. AND THAT SEQUENCING IS IMPORTANT; RIGHT?

09:50:25 21 A. I THINK THAT YOU WANT TO CREATE A COMMAND THAT'S AS CLOSE  
09:50:32 22 AS WHAT YOUR ENGINEERS, YOUR USERS ARE GOING TO EXPECT, SO  
09:50:36 23 SURE.

09:50:36 24 Q. RIGHT. AND THAT SEQUENCING, YOU SAW THE PROCESS, WAS  
09:50:39 25 ACTUALLY A CHOICE THAT THEY MAKE, CORRECT?

09:50:46 1 A. I THINK, ONCE AGAIN, WE ARE TALKING KIND OF ABSTRACTLY,

09:50:50 2 BUT I THINK IN SOME CASES, IF I'M GOING TO CREATE A NEW CLI

09:50:53 3 COMMAND TO DISPLAY SOME INFORMATION, I THINK I KIND OF KNOW

09:50:56 4 WHERE THAT'S GOING TO GO, IT'S GOING TO BE A SHOW COMMAND.

09:50:59 5 MAYBE THERE'S LESS CHOICE THERE. MAYBE IN SOME OTHER

09:51:02 6 CASES THERE MIGHT BE A COUPLE OF CHOICES, I CAN'T IMAGINE MORE

09:51:06 7 THAN JUST A COUPLE.

09:51:07 8 Q. WELL, THERE'S A CHOICE OF WHETHER YOU WANT TO CREATE A NEW

09:51:10 9 HIERARCHY ALL TOGETHER; RIGHT?

09:51:11 10 A. I THINK THAT WOULD MAKE SENSE IN SOME CASES, BUT ONCE

09:51:14 11 AGAIN, WE ARE TALKING FAIRLY HYPOTHETICALLY.

09:51:17 12 Q. AND YOU RECALL FROM THE PARSER-POLICE DOCUMENT WE TALKED

09:51:21 13 QUITE A BIT ABOUT, THAT ONE OF THE CONSIDERATIONS WAS TO THINK

09:51:24 14 EXTENSIBLY; RIGHT?

09:51:26 15 A. I DON'T RECALL THAT EXACTLY. MAYBE IT'S THERE.

09:51:28 16 Q. OKAY. SO CAN WE GO TO 5175?

09:51:38 17 A. IS THIS IN MY BINDER?

09:51:40 18 Q. I'M GOING TO PUT IT UP ON THE SCREEN. I THINK IT IS IN

09:51:43 19 YOUR BINDER.

09:51:55 20 (OFF-THE-RECORD DISCUSSION.)

09:52:03 21 A. I FOUND IT, SIR.

09:52:04 22 Q. OKAY. SO YOU SEE HERE NUMBER 1 IS "THINK EXTENSIBLY;"

09:52:13 23 RIGHT?

09:52:13 24 A. I MISUNDERSTOOD, I THOUGHT YOU SAID "THINK EXTENSIVELY."

09:52:18 25 Q. OH, I'M SORRY. THAT'S MY ACCENT.

09:52:18 1 A. MY APOLOGIES.

09:52:23 2 Q. I SAID "EXTENSIBLY."

09:52:25 3 SO YOU AGREE THAT'S A CONSIDERATION, RIGHT?

09:52:27 4 A. I AGREE.

09:52:27 5 Q. SOME OF THE WHILE WE ARE ON THIS DOCUMENT, YOU RECALL THIS

09:52:31 6 DOCUMENT, THESE WERE GUIDELINES, CORRECT?

09:52:33 7 A. I THINK IT SAYS SOMETHING ABOUT ENGINEERS BEING REQUIRED

09:52:37 8 TO GO THROUGH THE PROCESS. I THINK THERE WAS SOME TESTIMONY

09:52:42 9 FROM MR. REMAKER THAT THEY DIDN'T NECESSARILY HAVE ENFORCEMENT

09:52:47 10 POWER.

09:52:47 11 Q. WELL, ACTUALLY, IF WE GO TO -- AND I HAVE TO FIND THIS IN

09:52:55 12 MY NOTES, I'M A LITTLE OUT OF SEQUENCE HERE, SO BEAR WITH ME.

09:52:59 13 IF WE GO TO THE PORTION OF THE DOCUMENT THAT TALKS ABOUT

09:53:03 14 THE JUDGMENT OF THE ENGINEERS.

09:53:24 15 A. CAN YOU HELP ME OUT?

09:53:26 16 Q. YEAH. HE'S GETTING THERE. PAGE 2 OF THE DOCUMENT. "NO

09:53:38 17 CONSENSUS." AND I JUST FOUND IT IN MY NOTES, SIR.

09:53:42 18 YOU SEE THE VERY LAST SENTENCE OF THAT SECOND PARAGRAPH,

09:53:45 19 IT SAYS, "YOUR PROFESSIONAL JUDGMENT IS YOUR GUIDANCE HERE;"

09:53:49 20 RIGHT?

09:53:50 21 A. I SEE THAT SENTENCE.

09:53:51 22 Q. RIGHT. SO IF WE JUST STICK WITH THAT FIRST THING, "THINK

09:53:56 23 EXTENSIBLE," ONE OF THE THINGS IT SAID IS HEY, YOU MIGHT NOT

09:54:01 24 WANT TO USE HYPHENS; RIGHT?

09:54:03 25 A. I THINK IT SAYS A LITTLE MORE ABOUT WHY YOU WOULDN'T, BUT

09:54:06 1 THAT'S ONE OF THE CONSIDERATIONS.

09:54:07 2 Q. THAT'S ONE OF THE EXAMPLES OF POTENTIALLY BAD COMMANDS;

09:54:11 3 RIGHT?

09:54:11 4 A. IN CERTAIN CASES, YES.

09:54:12 5 Q. BUT YOU KNOW FROM LOOKING THROUGH JUST THE COMMANDS THAT

09:54:15 6 ARE ASSERTED IN THIS CASE, THAT WAS OFTEN REJECTED BY THE

09:54:18 7 ENGINEERS, CORRECT?

09:54:20 8 A. NO, I WOULDN'T AGREE.

09:54:22 9 Q. YOU DON'T.

09:54:24 10 IF WE GO BACK TO 9042. YOU SEE HERE YOU PICKED THOSE TWO,

09:54:41 11 ADDRESS-FAMILY AND AGGREGATE-ADDRESS; RIGHT?

09:54:45 12 A. CORRECT.

09:54:45 13 Q. THAT'S NOT VERY EXTENSIBLE ANYMORE; RIGHT?

09:54:48 14 A. SO I THINK WITHOUT GOING INTO TOO MUCH HOW PARSERS WORK

09:54:54 15 AND SO FORTH, IF YOU PUT "AGGREGATE SPACE ADDRESS," THAT LEAVES

09:54:57 16 YOU ELBOW ROOM TO HAVE "AGGREGATE SPACE OTHER THINGS." BUT IF

09:55:01 17 YOU PUT AGGREGATE-ADDRESS, THEN YOU ARE SORT OF LOCKED IN. AND

09:55:05 18 I THINK THAT'S WHAT THE PARSER-POLICE DOCUMENT IS TALKING

09:55:07 19 ABOUT.

09:55:07 20 Q. RIGHT. THAT'S EXACTLY WHAT I'M SAYING.

09:55:10 21 WHAT YOU WOULD SEE HERE, THE TWO YOU PICKED OUT, THOSE

09:55:13 22 WOULD BE EXAMPLES IN THE PARSER-POLICE DOCUMENTS OF BAD

09:55:16 23 COMMANDS; RIGHT.

09:55:16 24 A. NO. I THINK IT MAKES SENSE TO TERMINATE WHAT THEY CALL

09:55:20 25 THE PARSE TREE.

09:55:21 1 IN CERTAIN CASES, I THINK THE DOCUMENT IS TALKING ABOUT  
09:55:24 2 THAT AS ONE OF THE THINGS YOU HAVE TO DECIDE IF YOU GOING TO  
09:55:28 3 TERMINATE OR LEAVE IT EXTENSIBLE.  
09:55:30 4 Q. RIGHT. EXACTLY. ONE OF THE THINGS YOU HAVE TO DECIDE  
09:55:37 5 WHERE, YOU, IS BEING AN ENGINEER CREATING THE COMMAND; RIGHT?  
09:55:41 6 A. THE PROGRAMMER CREATING THE COMMAND HAS TWO CHOICES, YES.  
09:55:45 7 Q. YEAH, EXACTLY.  
09:55:47 8 OKAY. SO NOW I WOULD LIKE TO GO TO YOUR SLIDE 14.  
09:55:57 9 A. IN MY DEMONSTRATIVES?  
09:55:58 10 Q. YEAH. SO HERE YOU WERE TALKING ABOUT THE MODES AND  
09:56:09 11 PROMPTS IN PRIOR SYSTEMS; RIGHT?  
09:56:10 12 A. YES.  
09:56:10 13 Q. AND YOU SET OUT TWO MODES, PRIVILEGE MODE AND NONPRIVILEGE  
09:56:16 14 MODE; RIGHT?  
09:56:17 15 A. YES.  
09:56:17 16 Q. SO IN ALL OF THE THINGS YOU LOOKED THROUGH, YOU NEVER  
09:56:19 17 FOUND A GLOBAL CONFIGURATION MODE, CORRECT?  
09:56:21 18 A. NOT PRIOR TO CISCO.  
09:56:23 19 Q. RIGHT. AND IN ALL THE THINGS YOU LOOKED FOR, YOU NEVER  
09:56:26 20 FOUND AN INTERFACE CONFIGURATION MODE, CORRECT?  
09:56:28 21 A. THAT'S CORRECT.  
09:56:29 22 Q. AS WELL AS THE CORRESPONDING PROMPTS TO THOSE, CORRECT?  
09:56:33 23 A. IF YOU CAN CLARIFY PROMPT. THE HASH SIGN IS STILL USED IN  
09:56:40 24 THE MODES YOU NAMED.  
09:56:40 25 Q. CORRECT. BUT THE PROMPTS FOR THOSE MODE INCLUDE THE

09:56:45 1 CONFIGURATION LETTERS, CORRECT?

09:56:47 2 A. THEY INCLUDE THE HOST NAME OF THE DEVICE, WHICH IS

09:56:52 3 CONFIGUREABLE BY THE USER, THEN IN PARENTHESES, THAT CONFIG AND

09:56:57 4 CONFIG-IF.

09:56:57 5 Q. RIGHT. YOU DIDN'T FIND THAT PROMPT IN ANY OF THE MANY

09:57:01 6 DOCUMENTS THAT YOU LOOKED THROUGH FOR SYSTEMS THAT CAME BEFORE,

09:57:04 7 CORRECT?

09:57:04 8 A. THE HOST NAME WOULD BE THERE IN THOSE DOCUMENTS, BUT THAT

09:57:07 9 PARENTHETICAL, I DIDN'T FIND.

09:57:08 10 Q. RIGHT.

09:57:10 11 AND YOU UNDERSTAND, SIR, THAT WHAT'S BEING ASSERTED IN THE

09:57:13 12 CASE IS THAT PARTICULAR ARRANGEMENT OF THOSE FOUR MODES AND

09:57:16 13 PROMPTS; RIGHT?

09:57:16 14 A. I ACTUALLY HAVE BEEN UNCLEAR WHAT EXACTLY CISCO IS

09:57:20 15 CLAIMING PROTECTION FOR THEIR -- I UNDERSTAND IT'S NOT THE

09:57:25 16 ACTUAL WORD INSIDE THE PARENTHESIS, MY UNDERSTANDING NOW IS

09:57:32 17 IT'S THE ORDER OF THE WORDS; IS THAT CORRECT?

09:57:35 18 Q. IT'S THE ARRANGEMENT OF THE MODES AND PROMPTS, CORRECT?

09:57:38 19 SO YOU UNDERSTAND THAT?

09:57:39 20 A. I THINK SO.

09:57:40 21 Q. SO TWO OF THE MODES YOU DIDN'T FIND AT ALL; RIGHT?

09:57:43 22 A. I DIDN'T FIND THOSE TWO MODES YOU NAMED, YES.

09:57:45 23 Q. RIGHT. SO THEN IT GOES WITHOUT SAYING THAT THAT

09:57:48 24 PARTICULAR ARRANGEMENT OF THE FOUR MODES AND PROMPTS, YOU

09:57:51 25 DIDN'T FIND AT ALL?

09:57:52 1 A. I DIDN'T FIND THAT ORDERING BECAUSE I DIDN'T FIND THE  
09:57:55 2 MODES.

09:57:56 3 Q. RIGHT.

09:57:56 4 SO NOW I WANT TO TALK ABOUT A FEW OTHER THINGS.

09:58:09 5 SO ONE OF THE THINGS YOU HAD SAID IS YOU DIDN'T THINK THAT

09:58:16 6 THERE WAS A SUBSTANTIAL AMOUNT OF THE WORK THAT WAS TAKEN,

09:58:24 7 CORRECT?

09:58:24 8 A. I'M UNCLEAR ON WHAT YOU ARE ASKING.

09:58:28 9 Q. OKAY. SO ONE OF YOUR FAIR USE FACTORS, YOU TALKED ABOUT

09:58:31 10 THE AMOUNT OF THE WORK. YOU PUT UP A SLIDE AND SAID THERE'S

09:58:37 11 441 COMMANDS THAT ARE ACCUSED FROM IOS AND THERE'S 16,000

09:58:41 12 COMMANDS IN ALL OF IOS; RIGHT?

09:58:43 13 A. I RECALL THAT, YES.

09:58:44 14 Q. YOU DIDN'T ADDRESS THE QUALITY OF THAT THOUGH; RIGHT?

09:58:55 15 A. IN WHAT SENSE DO YOU MEAN THE "QUALITY" OF THAT?

09:58:59 16 Q. THE QUALITY OF WHAT WAS TAKEN; RIGHT?

09:59:03 17 A. NOT IN THE WAY I'M UNDERSTANDING YOUR QUESTION.

09:59:08 18 Q. RIGHT. YOU SIMPLY JUST LOOKED AT THE NUMBERS, YOU

09:59:11 19 COMPARED ONE NUMBER TO ANOTHER, CORRECT?

09:59:14 20 A. I TOOK CISCO'S NUMBER DIVIDED BY CISCO'S NUMBER.

09:59:17 21 Q. THAT'S IT?

09:59:18 22 A. THAT'S IT.

09:59:19 23 Q. OKAY. SO SIR, YOU WERE HERE FOR MR. DR. LI -- EXCUSE ME,

09:59:25 24 DR. LI'S TESTIMONY, CORRECT?

09:59:26 25 A. I WAS.

11:19:40 1 THE COURT: AND IT WILL BE ADMITTED.

11:19:42 2 (DEFENDANT'S EXHIBIT 5119 WAS ADMITTED INTO EVIDENCE.)

11:19:42 3 MR. VAN NEST: TX 5119.

11:19:47 4 THE NEXT DEPOSITION IS A LITTLE BIT LONGER. THIS IS THE

11:19:53 5 DEPOSITION OF DOUG GOURLAY. IT'S A LITTLE LONGER, IT'S

11:19:56 6 29 MINUTES.

11:19:57 7 18 MINUTES OF THAT SHOULD BE ASSESSED TO ARISTA AND

11:20:00 8 11 MINUTES TO CISCO.

11:20:15 9 **(THE VIDEO DEPOSITION OF DOUGLAS GOURLAY WAS PLAYED INTO**

11:50:01 10 **THE RECORD.)**

11:50:01 11 MR. VAN NEST: YOUR HONOR, THAT CONCLUDES

11:50:03 12 MR. GOURLAY'S DEPOSITION.

11:50:05 13 I HAVE A 15-MINUTE -- ONE LAST VIDEO THIS MORNING, OR I

11:50:10 14 HAVE A FIVE-MINUTE READING OF AN INTERROGATORY. AND I COULD DO

11:50:14 15 EITHER ONE, WHATEVER YOUR HONOR --

11:50:16 16 THE COURT: I AM THINKING WE WILL PUSH THROUGH AND DO

11:50:19 17 THE 15-MINUTE TAPE, SINCE WE ARE DOING THOSE.

11:50:23 18 MR. PAK: WE MAY HAVE SOME EXHIBITS TO MOVE IN, BASED

11:50:26 19 ON MR. GOURLAY'S VIDEO TESTIMONY.

11:50:29 20 MR. VAN NEST: LET'S PASS THAT.

11:50:30 21 MY SHEET SAID THERE WEREN'T ANY, BUT IF YOU WANT TO MOVE

11:50:35 22 THEM IN, YOU CAN. WE WILL CONFER OVER THE LUNCH HOUR.

11:50:43 23 THIS NEXT WITNESS IS DEEPAK MALIK. THIS IS A -- JUST

11:50:49 24 OVER -- IT'S ABOUT A 15-MINUTE SEGMENT, YOUR HONOR.

11:50:51 25 TEN MINUTES SHOULD BE ATTRIBUTED TO ARISTA, AND FIVE TO

02:16:39 1 CISCO ACQUIRED THE 7508 IN 2010. THE ARISTA 7508 RAN EOS

02:16:46 2 4.9.4. CISCO CONDUCTED RFC STANDARDS TESTING FOR LATENCY,

02:16:53 3 MULTICAST FORWARD RATE, HEAD-OF-LINE TESTING, BUFFER

02:16:58 4 PERFORMANCE AND ACL.

02:17:01 5 CISCO EMPLOYEES IN THE SAVTG HAD ACCESS TO THE ARISTA

02:17:06 6 7508.

02:17:08 7 AND FINALLY, CISCO ACQUIRED THE 7508E FROM PHW

02:17:13 8 INTERNATIONAL IN AUGUST 2013. CISCO CONDUCTED RFC STANDARDS

02:17:18 9 TESTING FOR RFC 2544, 2889, AND 3918; BUFFER PERFORMANCE

02:17:29 10 TESTING; AND POWER CONSUMPTION TESTING."

02:17:32 11 YOUR HONOR, THERE IS AN ADDITION OF A SUPPLEMENTAL ANSWER

02:17:35 12 WITH AN ADDITIONAL NUMBER OF SWITCHES, BUT AT THIS TIME I DON'T

02:17:38 13 NEED TO READ ANYMORE. I CAN SIMPLY OFFER 9077 INTO EVIDENCE.

02:17:45 14 MR. PAK: NO OBJECTION.

02:17:47 15 THE COURT: AND IT WILL BE ADMITTED.

02:17:48 16 MR. VAN NEST: THANK YOU, YOUR HONOR.

02:17:50 17 (DEFENDANT'S EXHIBIT 9077 WAS ADMITTED INTO EVIDENCE.)

02:17:50 18 MR. VAN NEST: AND MS. MCCLOSKEY WILL CALL OUR NEXT

02:18:02 19 WITNESS.

02:18:03 20 THE COURT: ALL RIGHT. MS. MCCLOSKEY.

02:18:06 21 MS. MCCLOSKEY: ARISTA CALLS BALAJI VENKATRAMAN.

02:18:09 22 THE COURT: AND IS MR. VENKATRAMAN IN THE COURTROOM?

02:18:13 23 MS. MCCLOSKEY: YES.

02:18:15 24 THE COURT: IF YOU WOULD COME FORWARD TO THE WITNESS

02:18:17 25 STAND, PLEASE, AND STAND TO BE SWORN.

02:29:19 1 CONFIGURED OR SOME COMMANDS MAY NEED ADDITIONAL PRIVILEGES TO  
02:29:24 2 BE EXERCISED.

02:29:25 3 SO THAT IS THE HIERARCHY.

02:29:27 4 Q. THANK YOU.

02:29:27 5 AND WHY WAS HP TELLING POTENTIAL CUSTOMERS AND THE PUBLIC  
02:29:31 6 THAT ITS CLI REDUCES TRAINING TIME AND EXPENSES AND INCREASES  
02:29:35 7 PRODUCTIVITY IN MULTI VENDOR INSTALLATIONS?

02:29:40 8 A. SO IN GENERAL, OVER TIME, THE INDUSTRY HAS ADOPTED A  
02:29:46 9 COMMON SET OF COMMANDS TO CONFIGURE SIMILAR OPERATIONS ON  
02:29:53 10 ROUTERS AND SWITCHES.

02:29:54 11 AND THE ADVANTAGE OF THAT IS IF THOSE COMMANDS ARE  
02:30:01 12 SIMILAR, THEN USERS DON'T HAVE TO RELEARN THESE COMMANDS FOR  
02:30:08 13 EVERY MODEL OR EVERY VENDOR AND THEREFORE REDUCES THE TRAINING  
02:30:13 14 COST.

02:30:13 15 Q. THANK YOU.

02:30:15 16 MS. MCCLOSKEY: NO FURTHER QUESTIONS.

02:30:16 17 THE COURT: CROSS-EXAMINATION?

02:30:16 18 MR. PAK: YES, YOUR HONOR.

02:30:18 19 THANK YOU.

02:30:18 20 **CROSS-EXAMINATION**

02:30:18 21 BY MR. PAK:

02:31:03 22 Q. GOOD AFTERNOON, MR. VENKATRAMAN.

02:31:05 23 A. GOOD AFTERNOON.

02:31:06 24 Q. WE TALKED A LITTLE BIT ABOUT HOW HP MARKETS SOME OF ITS  
02:31:12 25 PRODUCTS WITH THE LABEL INDUSTRY STANDARD CLI; DO YOU RECALL

02:31:16 1 THAT?

02:31:17 2 A. YES.

02:31:17 3 Q. OKAY. BUT THERE IS NO FORMAL INDUSTRY STANDARD

02:31:22 4 ORGANIZATION, TO YOUR KNOWLEDGE, THAT RATIFIES SPECIFICATIONS

02:31:26 5 FOR A CLI USER INTERFACE FOR NETWORKING EQUIPMENT, CORRECT?

02:31:30 6 A. CORRECT.

02:31:30 7 Q. SO WHEN YOU ARE USING THE LABEL INDUSTRY STANDARD CLI IN

02:31:35 8 YOUR MARKETING DOCUMENTS, YOU ARE NOT TALKING ABOUT AN INDUSTRY

02:31:40 9 STANDARD THAT'S BEEN RATIFIED BY AN INDUSTRY STANDARD SETTING

02:31:43 10 ORGANIZATION, CORRECT?

02:31:44 11 A. CORRECT.

02:31:45 12 Q. IN FACT, I THINK YOU'VE DESCRIBED THAT AS A GENERAL WAY TO

02:31:53 13 DESCRIBE THE TYPE OF CLI THAT HP USES; IS THAT FAIR?

02:31:56 14 A. CORRECT. OVER TIME, THE INDUSTRY HAS EVOLVED TO USE A SET

02:32:01 15 OF COMMON WAYS TO ADDRESS AND CONFIGURE ROUTERS, AND THAT IS

02:32:04 16 THE INDUSTRY STANDARD.

02:32:07 17 Q. BUT YOU ARE NOT OFFERING ANY OPINIONS TODAY ABOUT WHETHER

02:32:13 18 THE CLI COMMANDS AT ISSUE HAD BEEN SUBJECT TO A RATIFICATION

02:32:17 19 PROCESS BY AN INDUSTRY STANDARD ORGANIZATION, THAT'S NOT WHAT

02:32:20 20 YOU ARE TESTIFYING ABOUT TODAY, CORRECT?

02:32:21 21 A. CORRECT.

02:32:22 22 Q. AND SIR, YOU WOULD AGREE WITH ME THAT THERE ARE MULTIPLE

02:32:25 23 WAYS TO IMPLEMENT A SPECIFIC CLI COMMAND, CORRECT?

02:32:29 24 A. YES, THERE ARE MULTIPLE WAYS.

02:32:31 25 Q. AND DIFFERENT COMPANIES CAN AND DO, IN FACT, CREATE THEIR

02:32:34 1 OWN CLI SYNTAX AND COMMANDS FOR THE SAME FUNCTIONALITY,  
02:32:38 2 CORRECT?  
02:32:38 3 A. YES. THE SYNTAX MAY VARY, BUT IN GENERAL, THEY TRY TO USE  
02:32:46 4 A COMMON PARADIGM SO THAT, AS WE SAID EARLIER, THE USERS DON'T  
02:32:53 5 HAVE TO RELEARN THE SYNTAX EVERY SINGLE TIME.  
02:32:56 6 Q. BUT THE REALITY IS DIFFERENT COMPANIES ARE FREE TO USE  
02:32:59 7 WHATEVER COMMANDS THEY WANT TO USE, IF THAT'S THEIR CHOICE,  
02:33:02 8 CORRECT?  
02:33:02 9 A. OF COURSE.  
02:33:02 10 Q. OKAY. AND IN FACT, YOU DIDN'T MENTION THIS, BUT HP  
02:33:06 11 ACTUALLY MAKES MULTIPLE TYPES OF SWITCHING EQUIPMENT, CORRECT?  
02:33:09 12 A. YES.  
02:33:10 13 Q. SO COUNSEL FOR ARISTA ASKED YOU ABOUT PRO CURVE AND I  
02:33:15 14 BELIEVE ONE OF THE HP 5000 OR 5900 SERIES PRODUCTS, CORRECT?  
02:33:20 15 A. CORRECT.  
02:33:20 16 Q. HOW MANY PRODUCTS DOES HP MAKE IN THE GENERAL ETHERNET  
02:33:24 17 SWITCHING WORLD?  
02:33:27 18 A. A LOT OF PRODUCTS, I DON'T KNOW THE EXACT NUMBER.  
02:33:30 19 Q. OKAY. THE LOTS OF PRODUCTS AND HERE YOU WERE JUST ASKED  
02:33:33 20 ABOUT THREE OF THOSE PRODUCTS TODAY, CORRECT?  
02:33:35 21 A. CORRECT.  
02:33:35 22 Q. AND IN FACT, ISN'T IT TRUE, SIR, THAT HP MAKES A LINE OF  
02:33:39 23 PRODUCT IT IS CALLED THE COMWARE?  
02:33:43 24 A. YES.  
02:33:44 25 Q. AND YOU KNOW THAT COMWARE HAS CLI COMMANDS AND SYNTAX THAT

02:33:49 1 ARE VERY DIFFERENT THAN THE COMMANDS AND SYNTAX THAT ARE USED  
02:33:52 2 BY THE PRO CURVE OR THE PROVISION LINE OF PRODUCTS, CORRECT?  
02:33:57 3 A. SITTING HERE, I DON'T KNOW HOW DIFFERENT OR SIMILAR THE  
02:34:05 4 SYNTAX IS TO A PARTICULAR OTHER ROUTER DEVICE. IT COULD BE  
02:34:10 5 SAME, IT COULD BE SIMILAR, I DON'T KNOW.  
02:34:12 6 Q. LET'S SEE IF WE CAN REFRESH YOUR MEMORY ABOUT THAT.  
02:34:15 7 I WOULD LIKE TO HAVE YOU TAKE A LOOK AT EXHIBIT 6380.  
02:34:30 8 A. OKAY.  
02:34:30 9 Q. THIS IS A TRIAL EXHIBIT THAT'S BEEN PRODUCED IN THIS CASE,  
02:34:33 10 IT'S AN HP DOCUMENT, IT'S TITLED "HP NETWORKING AND CISCO CLI  
02:34:39 11 REFERENCE GUIDE;" DO YOU SEE THAT?  
02:34:42 12 A. YES.  
02:34:47 13 Q. DO YOU SEE THAT?  
02:34:48 14 A. I SEE THAT.  
02:34:49 15 Q. DO YOU HAVE ANY REASON TO DISPUTE THAT THIS IS AN  
02:34:54 16 AUTHENTIC HP DOCUMENT?  
02:34:56 17 A. I SEE THE HP LOGO, I HAVE NO REASON TO DOUBT ITS  
02:35:00 18 AUTHENTICITY.  
02:35:02 19 MR. PAK: YOUR HONOR, I WOULD LIKE TO MOVE INTO  
02:35:05 20 EVIDENCE EXHIBIT 6380.  
02:35:07 21 MS. MCCLOSKEY: NO OBJECTION.  
02:35:08 22 THE COURT: IT WILL BE ADMITTED.  
02:35:09 23 (PLAINTIFF'S EXHIBIT 6380 WAS ADMITTED INTO EVIDENCE.)  
02:35:09 24 BY MR. PAK:  
02:35:10 25 Q. SO THIS IS AN HP NETWORKING AND CISCO CLI REFERENCE GUIDE,

02:35:12 1 IT'S A THIRD EDITION, INCLUDES COMWARE 7; DO YOU SEE THAT?

02:35:20 2 A. YES.

02:35:20 3 Q. OKAY. AND IT'S COMMON PRACTICE FOR HP TO PUBLISH MANUALS

02:35:24 4 AND REFERENCE GUIDES TO TALK ABOUT THE CLI COMMANDS FOR ITS

02:35:27 5 DIFFERENT PRODUCTS?

02:35:28 6 A. CORRECT.

02:35:28 7 Q. SO LET'S TAKE A LOOK AT PAGE 10 OF THIS DOCUMENT.

02:35:33 8 AND AT THE TOP, MR. FISHER, IF WE COULD BLOW UP THE TOP

02:35:39 9 THERE, USING THIS GUIDE.

02:35:40 10 IT SAYS, "THIS CLI REFERENCE GUIDE PROVIDES CLI COMMAND

02:35:43 11 COMPARISONS IN TWO DIFFERENT FORMATS."

02:35:47 12 DO YOU SEE THAT STATEMENT?

02:35:49 13 A. YES.

02:35:49 14 Q. SO THE FIRST WAY IT DOES IT IS SIDE-BY-SIDE COMPARISON.

02:35:57 15 IT PROVIDES A TABLE OF THE BASIC COMMANDS REQUIRED TO EXECUTE A

02:36:00 16 GIVEN FUNCTION IN EACH OF THE OPERATING SYSTEMS.

02:36:03 17 DO YOU SEE THAT?

02:36:03 18 A. YES.

02:36:04 19 Q. AND THEN IT SAYS, AND IF YOU FOLLOW ALONG IT SAYS,

02:36:07 20 "INSTEAD, COMMANDS THAT HAVE SIMILAR FUNCTIONS ARE ALIGNED SIDE

02:36:11 21 BY SIDE SO THAT YOU CAN EASILY TRANSLATE THE COMMANDS ON ONE

02:36:15 22 PLATFORM WITH SIMILAR COMMANDS ON ANOTHER PLATFORM;" CORRECT?

02:36:20 23 A. CORRECT.

02:36:20 24 Q. SO THIS IS HP TELLING CUSTOMERS, IF YOU ARE USING HP

02:36:25 25 PRODUCTS OR PRODUCTS FROM OTHER VENDORS, AND THERE ARE

02:36:29 1 DIFFERENCES BETWEEN THE COMMANDS, YOU CAN USE THIS GUIDE AS A  
02:36:32 2 WAY TO TRANSLATE FROM ONE CLI COMMAND SET TO ANOTHER, CORRECT?  
02:36:36 3 A. CORRECT.  
02:36:37 4 Q. AND THEN IT ALSO PROVIDES A DETAILED DESCRIPTION WHERE IT  
02:36:41 5 SAYS, BENEATH THE SIDE-BY-SIDE COMPARISON, THIS GUIDE PROVIDES  
02:36:45 6 A MORE IN-DEPTH COMPARISON DISPLAYING THE OUTPUT OF THE COMMAND  
02:36:50 7 AND OPTIONS.  
02:36:50 8 DO YOU SEE THAT AS WELL?  
02:36:52 9 A. YES.  
02:36:53 10 Q. NOW IF WE GO DOWN TO, SCROLL DOWN A LITTLE BIT. COMWARE  
02:36:59 11 DIFFERENCES.  
02:37:00 12 "IF YOU ARE FAMILIAR WITH EITHER THE HP PROVISION CLI OR  
02:37:04 13 THE CISCO IOS CLI, YOU WILL NOTICE THAT COMWARE CLI'S IS  
02:37:11 14 ORGANIZED SLIGHTLY DIFFERENTLY."  
02:37:12 15 DO YOU SEE THAT?  
02:37:13 16 A. YES.  
02:37:14 17 Q. AND IT SAYS, "COMWARE WAS DESIGNED FOR INTERNET SERVICE  
02:37:17 18 PROVIDERS, ISP'S?"  
02:37:19 19 A. YES.  
02:37:20 20 Q. AND MANY FEATURES AND FUNCTIONS, SUCH AS SECURITY AND  
02:37:25 21 QUALITY OF SERVICE ARE MULTI-TIERED TO SUPPORT THE DIFFERENT  
02:37:28 22 NEEDS OF MULTIPLE ENTITIES ACCESSING THE SAME SWITCH.  
02:37:33 23 DO YOU SEE THAT?  
02:37:33 24 A. YES.  
02:37:34 25 Q. AND YOU HAVE NO REASON TO DISPUTE THOSE PUBLIC STATEMENTS

02:37:38 1 BY HP?

02:37:38 2 A. NO.

02:37:39 3 Q. AND IF WE GO TO NAVIGATION DIFFERENCES AMONG CLI'S,

02:37:43 4 THERE'S SOME DESCRIPTIONS THERE, BUT IT ALSO DESCRIBES SOME OF

02:37:49 5 THE SIMILARITIES BUT ALSO SOME OF THE DIFFERENCES BETWEEN THE

02:37:51 6 COMWARE CLI VERSUS THE CISCO CLI.

02:37:55 7 DO YOU SEE THAT?

02:37:57 8 A. YES.

02:38:00 9 Q. AND THEN IF YOU FURTHER SCROLL, MR. FISHER, TO

02:38:03 10 CONFIGURATION DIFFERENCES.

02:38:05 11 AGAIN, THERE ARE DESCRIPTIONS BEING PROVIDED ON SOME OF

02:38:10 12 THE SIMILARITIES, BUT ALSO DIFFERENCES AMONG THE PROVISION

02:38:13 13 COMWARE AND CISCO CLI'S, CORRECT?

02:38:16 14 A. YES.

02:38:16 15 Q. AND NOW LET'S LOOK AT SOME OF THE ACTUAL SPECIFIC MODES

02:38:27 16 AND PROMPTS. IF YOU COULD TURN TO PAGE 12.

02:38:29 17 YOU UNDERSTAND WHAT MODES AND PROMPTS ARE, CORRECT, IN THE

02:38:31 18 CLI'S?

02:38:32 19 A. YES.

02:38:33 20 Q. SO WE HAVE THREE COLUMNS, PROVISION, IN LIGHT BLUE TO THE

02:38:37 21 LEFT, COMWARE IS THE MIDDLE COLUMN, AND CISCO TO THE RIGHT; DO

02:38:41 22 YOU SEE THAT?

02:38:41 23 A. YES.

02:38:41 24 Q. JUST TO REMIND THE JURY, PROVISION AND COMWARE ARE HP

02:38:44 25 PRODUCTS, CORRECT?

02:38:45 1 A. CORRECT.

02:38:46 2 Q. AND SO IF YOU LOOK, YOU CAN SEE THAT THE COMWARE HAS A

02:38:52 3 SYSTEM VIEW MODE, APPARENTLY, BUT DOES NOT HAVE A PRIVILEGED

02:38:56 4 EXEC MODE; IS THAT CORRECT?

02:38:58 5 A. CORRECT.

02:38:58 6 Q. OKAY. AND YOU DON'T HAVE ANY REASON TO DISPUTE THAT,

02:39:02 7 SITTING HERE TODAY?

02:39:02 8 A. NO.

02:39:03 9 Q. AND THEN IF YOU LOOK AT THE PROMPTS, YOU CAN SEE THAT THE

02:39:06 10 PROMPTS LOOK VERY DIFFERENTLY COMPARED TO THE CISCO PROMPTS.

02:39:09 11 FOR EXAMPLE THERE'S NO HASH TAG OR A PARENTHETICAL WITH CONFIG

02:39:14 12 IN THE COMWARE PROMPTS; IS THAT CORRECT?

02:39:17 13 A. CORRECT.

02:39:17 14 Q. AND YOU HAVE NO REASON TO DISPUTE THAT EITHER?

02:39:21 15 A. NO.

02:39:22 16 Q. LET'S LOOK AT SOME OF THE COMMANDS, COMPARING FREQUENTLY

02:39:25 17 USED COMMANDS, THERE'S A TABLE THERE.

02:39:30 18 AND SO I TAKE IT THAT HP, IN THIS DOCUMENT, HAS SUMMARIZED

02:39:34 19 SOME OF THE MOST OR COMMONLY USED COMMANDS FOR EACH OF THE

02:39:37 20 CLI'S, CORRECT?

02:39:38 21 A. CORRECT.

02:39:38 22 Q. SO IF WE LOOK AT PROVISION, IT HAS ENABLE, BUT COMWARE FOR

02:39:43 23 THE SAME FUNCTIONALITY USES THE COMMAND SYSTEM VIEW, CORRECT?

02:39:47 24 A. CORRECT.

02:39:48 25 Q. SYSTEM-VIEW, CORRECT?

02:39:51 1 A. CORRECT.

02:39:51 2 Q. AND SO THERE ARE TWO DIFFERENT COMMANDS FROM THE SAME

02:39:54 3 COMPANY, HP, FOR THE SAME FUNCTIONALITY, CORRECT?

02:39:57 4 A. CORRECT.

02:39:57 5 Q. AND EARLIER TODAY YOU TALKED ABOUT PRO CURVE, BUT YOU

02:40:01 6 DIDN'T TALK ABOUT COMWARE, CORRECT, WHEN YOU WERE ASKED BY

02:40:05 7 COUNSEL FOR ARISTA?

02:40:06 8 A. YES.

02:40:06 9 Q. OKAY. SO LET'S LOOK AT A FEW MORE OF THESE.

02:40:10 10 SHOW FLASH. DO YOU SEE THAT THAT IS NOW --

02:40:15 11 A. YES.

02:40:15 12 Q. THE COMMAND DIR, IN COMWARE, CORRECT?

02:40:19 13 A. YES.

02:40:19 14 Q. AND WE CAN GO ON AND ON, SHOW VERSION, DISPLAY VERSION; DO

02:40:26 15 YOU SEE THAT?

02:40:27 16 A. YES.

02:40:27 17 Q. SHOW HISTORY, DISPLAY HISTORY; DO YOU SEE THAT?

02:40:31 18 A. YES.

02:40:31 19 Q. ANOTHER DIFFERENCE. ERASE START. RESET SAVED.

02:40:36 20 DO YOU SEE THAT?

02:40:37 21 A. YEP.

02:40:39 22 Q. RELOAD, REBOOT, IS ANOTHER DIFFERENCE.

02:40:43 23 A. YES.

02:40:44 24 Q. WRITE MEMORY, SAVE.

02:40:47 25 A. YES.

02:40:48 1 Q. SHOW TECH, DISPLAY DIAGNOSTIC INFORMATION?

02:40:53 2 A. YES.

02:40:55 3 Q. ISN'T IT TRUE, SIR, THAT DIFFERENT ENGINEERS, EVEN IN THE

02:40:58 4 SAME COMPANY, CAN MAKE THEIR OWN CHOICES ABOUT HOW TO CREATE

02:41:05 5 THEIR OWN CLI COMMANDS AND SYNTAX FOR THE SAME FUNCTIONALITY,

02:41:08 6 AND WE CAN SEE IT IN THESE TWO PRODUCT LINES FROM HP, CORRECT?

02:41:13 7 A. THE DESIGNERS OF THE CLI HAVE SOME COMMON DESIGN

02:41:21 8 PRINCIPLES THAT THEY USE TO STRUCTURE THE CLI WITH VARIATIONS

02:41:30 9 IN SYNTAX.

02:41:30 10 AND SO THEY TRY TO STAY CONSISTENT IN THE USAGE OF

02:41:34 11 TERMINOLOGY IN THE CONSTRUCTION OF CLI, AND DIFFERENT

02:41:40 12 COMPANIES, DIFFERENT DESIGNERS DEVELOP THE CLI DIFFERENTLY,

02:41:45 13 NAME THE COMMANDS DIFFERENTLY. IN THIS CASE, COMWARE WAS

02:41:48 14 ACQUIRED BY HP, AND DIFFERENT DESIGN GROUPS DESIGN THOSE

02:41:54 15 SYNTAX.

02:41:54 16 Q. AND HP SELLS COMWARE PRODUCTS TODAY, CORRECT?

02:41:58 17 A. THAT'S RIGHT.

02:41:59 18 Q. SO WHAT I'M GETTING AT IS, ALTHOUGH SOME OF THE TERMS

02:42:02 19 MIGHT BE THE SAME, DIFFERENT DESIGNERS, EVEN AT THE SAME

02:42:06 20 COMPANY, CAN CHOOSE DIFFERENT WORDS, DIFFERENT HIERARCHIES,

02:42:09 21 DIFFERENT SYNTAX FOR THE SAME FUNCTIONS; ISN'T THAT TRUE, SIR?

02:42:12 22 A. THAT'S TRUE.

02:42:13 23 Q. OKAY.

02:42:14 24 MR. PAK: I HAVE NO MORE QUESTIONS, YOUR HONOR.

02:42:17 25 THE COURT: REDIRECT, MS. MCCLOSKEY?

02:42:38 1 REDIRECT EXAMINATION

02:42:40 2 BY MS. MCCLOSKEY:

02:42:42 3 Q. IF WE COULD STICK WITH THAT SAME PAGE ON 6380.

02:42:47 4 MR. VENKATRAMAN, YOU WERE JUST LOOKING AT THIS PAGE,

02:42:51 5 PAGE 12 OF THE MANUAL IN FRONT OF YOU.

02:42:53 6 AND DO YOU SEE THAT MANY OF THE COMMANDS, IF NOT ALL OF

02:42:55 7 THEM BETWEEN THE PROVISION, THE HP PROVISION AND THE CISCO,

02:42:58 8 MANY OF THOSE COMMANDS ON THE RIGHT SIDE AND THE LEFT SIDE OF

02:43:04 9 THIS COLUMN ARE SIMILAR, IF NOT IDENTICAL?

02:43:06 10 A. CORRECT.

02:43:07 11 Q. WOULD YOU BE SURPRISED TO LEARN THAT THE HP PROVISION ON

02:43:16 12 THE LEFT SIDE THERE, HAS HUNDREDS OF OVERLAPPING COMMANDS WITH

02:43:21 13 CISCO COMMANDS?

02:43:23 14 A. NO, MOST VENDORS HAVE OVERLAPPING COMMAND NAME AND SYNTAX.

02:43:30 15 Q. YOU UNDERSTAND, MR. VENKATRAMAN, THAT THERE'S CERTAIN CLI

02:43:34 16 COMMANDS ASSERTED IN THIS CASE BETWEEN CISCO AND ARISTA?

02:43:39 17 A. COULD BE.

02:43:40 18 Q. OKAY. AND OF THE APPROXIMATELY 500 DISPUTED COMMANDS,

02:43:44 19 WOULD IT SURPRISE YOU TO LEARN THAT HUNDREDS OF THOSE ARE USED

02:43:47 20 BY MULTIPLE VENDORS IN THE INDUSTRY?

02:43:50 21 A. NO.

02:43:52 22 Q. YOU TESTIFIED ABOUT A COMMON SET OF STANDARD COMMANDS.

02:43:56 23 WHAT DID YOU MEAN BY A COMMON SET OF STANDARD COMMANDS?

02:44:00 24 A. SO SOME COMMANDS LIKE "SHOW," "SHOW CONFIGURATION," IN

02:44:08 25 SOME VENDORS, MAY BE "SHOW," OTHERS MAY BE "VIEW," "SAVE"

02:44:14 1 VERSUS "WRITE."

02:44:18 2 THE INTENDED BEHAVIOR BY THE ROUTERS AND SWITCHES ARE THE

02:44:23 3 SAME. AND SO THOSE CLASS OF COMMANDS, THOSE CLASS OF INTENDED

02:44:30 4 BEHAVIOR ON THE SWITCHES AND ROUTERS ARE THE SAME.

02:44:33 5 THE SYNTAX MAY VARY, BUT WHAT YOU EXPECT THE ROUTER AND

02:44:37 6 THE SWITCH TO DO IS QUITE CONSISTENT.

02:44:41 7 Q. THANK YOU.

02:44:41 8 A. AND THOSE ARE THE COMMON THINGS.

02:44:43 9 MS. MCCLOSKEY: THANK YOU.

02:44:45 10 MR. PAK: NO MORE QUESTIONS, YOUR HONOR.

02:44:47 11 THE COURT: THANK YOU.

02:44:47 12 MR. VENKATRAMAN, YOU ARE FREE TO GO. THANK YOU FOR YOUR

02:44:50 13 TESTIMONY.

02:44:51 14 THE WITNESS: THANK YOU.

02:44:57 15 MR. VAN NEST: YOUR HONOR, WE HAVE ONE MORE SHORT

02:45:00 16 VIDEO WITNESS --

02:45:02 17 THE COURT: OKAY.

02:45:02 18 MR. VAN NEST: -- WHO IS GOING TO APPEAR.

02:45:04 19 HIS NAME GAVIN CATO, C-A-T-O. THIS IS A 16-MINUTE VIDEO,

02:45:14 20 OF WHICH NINE MINUTES WILL BE ATTRIBUTED TO ARISTA AND SEVEN

02:45:18 21 MINUTES TO CISCO.

02:45:18 22 **(THE VIDEO DEPOSITION OF GAVIN CATO WAS PLAYED INTO THE**

03:03:10 23 **RECORD.)**

03:03:10 24 MR. VAN NEST: YOUR HONOR, THAT CONCLUDES THE

03:03:11 25 TESTIMONY OF MR. CATO'S.

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
3 SAN JOSE DIVISION  
4  
5 CISCO SYSTEMS, INC., ) CV-14-5344-BLF  
6 )  
7 PLAINTIFF, ) SAN JOSE, CALIFORNIA  
8 VS. ) ) DECEMBER 9, 2016  
9 ARISTA NETWORKS, INC., ) VOLUME 12  
10 DEFENDANT ) PAGES 2418-2655  
10 \_\_\_\_\_ )

11 TRANSCRIPT OF PROCEEDINGS  
12 BEFORE THE HONORABLE BETH LABSON FREEMAN  
12 UNITED STATES DISTRICT JUDGE

13 A P P E A R A N C E S:

14 FOR THE PLAINTIFF: QUINN, EMANUEL, URQUHART & SULLIVAN  
15 BY: DAVID A. NELSON  
15 500 WEST MADISON STREET, SUITE 2450  
16 CHICAGO, IL 60661

17 FOR THE PLAINTIFF: QUINN, EMANUEL, URQUHART & SULLIVAN  
18 BY: SEAN PAK  
18 50 CALIFORNIA STREET, 22ND FLOOR  
19 SAN FRANCISCO, CALIFORNIA 94111

22 APPEARANCES CONTINUED ON NEXT PAGE

23 OFFICIAL COURT REPORTER: SUMMER FISHER, CSR, CRR  
24 CERTIFICATE NUMBER 13185

25 PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY  
TRANSCRIPT PRODUCED WITH COMPUTER

11:20:05 1 WANT TO USE, OR THE NAME OF THE HOST THAT I WANT TO USE OR SOME  
11:20:09 2 DETAIL THAT'S BEING USED AS PART OF THE COMMAND, THOSE  
11:20:13 3 PARAMETERS DON'T AFFECT THE FACT THAT YOU STILL HAVE THE  
11:20:17 4 COMMAND.

11:20:17 5 IN FACT, IF YOU LOOK AT THIS EXHIBIT, IT HAS AAA  
11:20:22 6 ACCOUNTING UNDER THE CISCO COMMAND, AND IT HAS AAA ACCOUNTING  
11:20:26 7 UNDER THE ARISTA COMMAND.

11:20:27 8 Q. AND SO IF WE SCROLL DOWN, GO TO THE NEXT PAGE, THERE'S  
11:20:34 9 ANOTHER ONE WE SEE THERE, AAA AUTHENTICATION LOGIN AND THEN THE  
11:20:40 10 ARISTA COMMAND AAA AUTHENTICATION LOGIN; DO YOU SEE THAT?

11:20:44 11 A. YES.

11:20:44 12 Q. SO WHEN YOU REVIEWED THIS EXHIBIT 9037, WHAT DID THAT  
11:20:47 13 ACTUALLY TELL YOU ABOUT THE RELATIONSHIP BETWEEN THE CISCO CLI  
11:20:54 14 COMMANDS AND THE ARISTA CLI COMMANDS?

11:20:57 15 A. THAT THEY WERE THE SAME, THEY ARE THE SAME COMMANDS.

11:21:00 16 Q. AND IS THAT TRUE FOR ALL OF THE 506 COMMANDS?

11:21:05 17 A. IT IS.

11:21:08 18 Q. NOW -- AND WHEN YOU SAY THAT THE SAME COMMANDS, DOES THAT  
11:21:13 19 MEAN THEY ARE IDENTICAL?

11:21:14 20 A. THEY ARE IDENTICAL, THAT'S CORRECT. YOU CAN LOOK THROUGH  
11:21:18 21 THIS ENTIRE EXHIBIT AND YOU SEAL THOSE FIRST TWO COLUMNS PAGE  
11:21:22 22 AFTER PAGE AFTER PAGE WHERE THE COMMANDS ARE IDENTICAL.

11:21:25 23 Q. NOW I WOULD LIKE TO GO TO EXHIBIT 5, WHICH IS ALREADY IN  
11:21:33 24 EVIDENCE.

11:21:34 25 MR. NELSON: AND IF WE CAN GO TO THE BATES NUMBER

02:17:54 1 TERMINOLOGY, WE BELIEVE THERE'S SIGNIFICANT CONFUSION ON THAT  
02:17:57 2 AS WELL AS, I THINK, PERHAPS IN VIOLATION OF YOUR HONOR'S IN  
02:18:03 3 LIMINE ORDER. THERE ARE WITNESSES THAT HAVE ACTUALLY TESTIFIED  
02:18:05 4 YES, THIS WAS AN INDUSTRY STANDARD AS WELL.  
02:18:07 5 SO THE INSTRUCTION THAT WE WOULD PROPOSE IS, "YOU HAD  
02:18:13 6 HEARD SOME WITNESSES USE THE TERM "INDUSTRY STANDARD" IN AN  
02:18:18 7 INFORMAL WAY TO MEAN THAT SOMETHING HAS BECOME POPULAR IN AN  
02:18:23 8 INDUSTRY AFTER THE TIME IT WAS CREATED. I WANT TO MAKE CLEAR  
02:18:26 9 TO YOU THAT A COPYRIGHT OWNER DOES NOT LOSE COPYRIGHT  
02:18:29 10 PROTECTION IN AN ORIGINAL WORK SOLELY BECAUSE IT LATER BECOMES  
02:18:33 11 POPULAR IN AN INDUSTRY."  
02:18:34 12 THE COURT: OKAY. WELL, I'VE ALREADY DENIED THAT.  
02:18:36 13 AND I THINK THAT THAT IS APPROPRIATE CLOSING ARGUMENT IF YOU  
02:18:40 14 WANT.  
02:18:40 15 I DON'T HAVE ANY RESTRICTION ON THAT, THAT I CAN TELL FROM  
02:18:43 16 WHAT YOU'VE READ, BUT I DON'T THINK THAT NEEDS TO COME FROM ME.  
02:18:46 17 ALL RIGHT.  
02:18:47 18 MR. VAN NEST: THANK YOU, YOUR HONOR.  
02:18:48 19 THE COURT: AND YOU HAVE NO MORE WITNESSES?  
02:18:50 20 MR. NELSON: NO, I DON'T.  
02:18:51 21 THE COURT: GOOD. YOU HAVE --  
02:18:52 22 MR. VAN NEST: YES, WE DO.  
02:19:06 23 THE COURT: ALL RIGHT. WE ARE GOING TO GO ABOUT  
02:19:08 24 ANOTHER 15 MINUTES BEFORE WE TAKE A BREAK.  
02:19:11 25 SO MR. NELSON, DO YOU HAVE ANYMORE WITNESSES?

08:25:16

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
3 SAN JOSE DIVISION

4  
5 CISCO SYSTEMS, INC., ) CV-14-5344-BLF  
6 )  
7 PLAINTIFF, ) SAN JOSE, CALIFORNIA  
VS. ) ) DECEMBER 12, 2016  
9 ARISTA NETWORKS, INC., ) VOLUME 13  
10 DEFENDANT ) PAGES 2656-2822  
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11 TRANSCRIPT OF PROCEEDINGS  
12 BEFORE THE HONORABLE BETH LABSON FREEMAN  
UNITED STATES DISTRICT JUDGE

13 A P P E A R A N C E S:

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15 BY: DAVID A. NELSON  
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18 BY: SEAN PAK  
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SAN FRANCISCO, CALIFORNIA 94111

22 APPEARANCES CONTINUED ON NEXT PAGE

23 OFFICIAL COURT REPORTER: SUMMER FISHER, CSR, CRR  
24 CERTIFICATE NUMBER 13185

25 PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY  
TRANSCRIPT PRODUCED WITH COMPUTER

09:19:36 1 REGARDLESS OF WHICH PARTY PRESENTED IT.

09:19:42 2 COPYRIGHT IS THE EXCLUSIVE RIGHT TO COPY. THIS RIGHT TO

09:19:46 3 COPY INCLUDES THE EXCLUSIVE RIGHTS TO OR TO AUTHORIZE OTHERS

09:19:51 4 TO:

09:19:52 5 1. REPRODUCE THE COPYRIGHTED WORK IN COPIES.

09:19:55 6 2. RECAST OR ADAPT THE WORK. THAT IS, PREPARE DERIVATIVE

09:20:00 7 WORKS BASED UPON THE COPYRIGHTED WORK.

09:20:04 8 3. DISTRIBUTE COPIES OF THE COPYRIGHTED WORK TO THE

09:20:09 9 PUBLIC BY SALE OR OTHER TRANSFER OF OWNERSHIP.

09:20:13 10 4. DISPLAY PUBLICLY A COPYRIGHTED WORK.

09:20:17 11 IT IS THE OWNER OF A COPYRIGHT WHO MAY EXERCISE THESE

09:20:21 12 EXCLUSIVE RIGHTS.

09:20:22 13 THE TERM "OWNER" INCLUDES THE AUTHOR OF THE WORK. IN

09:20:26 14 GENERAL, COPYRIGHT LAW PROTECTS AGAINST REPRODUCTION,

09:20:30 15 ADAPTATION, DISTRIBUTION, OR DISPLAY OF INFRINGING COPIES OF THE

09:20:35 16 OWNER'S COPYRIGHTED WORK WITHOUT THE OWNER'S PERMISSION. AN

09:20:40 17 OWNER MAY ENFORCE THESE RIGHTS TO EXCLUDE OTHERS IN AN ACTION

09:20:44 18 FOR COPYRIGHT INFRINGEMENT.

09:20:51 19 THE COPYRIGHTED WORKS INVOLVED IN THIS TRIAL ARE:

09:20:55 20 1. CISCO'S FOUR USER INTERFACES FOR IOS, IOS XR, IOS XE,

09:21:03 21 AND NX-OS.

09:21:06 22 2. CISCO'S TECHNICAL MANUALS.

09:21:09 23 YOU ARE INSTRUCTED THAT A COPYRIGHT MAY BE OBTAINED IN

09:21:13 24 USER INTERFACES AND TECHNICAL MANUALS.

09:21:19 25 COPYRIGHT LAW ALLOWS THE AUTHOR OF AN ORIGINAL WORK TO

09:21:23 1 STOP OTHERS FROM COPYING THE ORIGINAL EXPRESSION IN THE  
09:21:28 2 AUTHOR'S WORK. ONLY THE PARTICULAR EXPRESSION OF AN IDEA CAN  
09:21:32 3 BE COPYRIGHTED AND PROTECTED.  
09:21:35 4 COPYRIGHT LAW DOES NOT GIVE THE AUTHOR THE RIGHT TO  
09:21:38 5 PREVENT OTHERS FROM COPYING OR USING THE UNDERLYING IDEAS  
09:21:42 6 CONTAINED IN THE WORK, SUCH AS ANY PROCEDURES, PROCESSES,  
09:21:45 7 SYSTEMS, METHODS OF OPERATION, CONCEPTS, PRINCIPLES OR  
09:21:51 8 DISCOVERIES.  
09:21:58 9 ANYONE WHO COPIES ORIGINAL PROTECTABLE EXPRESSION FROM A  
09:22:04 10 COPYRIGHTED WORK DURING THE TERM OF THE COPYRIGHT WITHOUT THE  
09:22:08 11 OWNER'S PERMISSION INFRINGES THE COPYRIGHT.  
09:22:12 12 CISCO HAS THE BURDEN OF PROVING BY A PREPONDERANCE OF THE  
09:22:16 13 EVIDENCE THAT:  
09:22:17 14 1. CISCO IS THE OWNER OF A VALID COPYRIGHT.  
09:22:21 15 2. ARISTA COPIED ORIGINAL, PROTECTABLE EXPRESSION FROM  
09:22:24 16 THE COPYRIGHTED WORK.  
09:22:29 17 CISCO IS THE OWNER OF VALID COPYRIGHTS IN ITS FOUR USER  
09:22:33 18 INTERFACES FOR IOS, IOS XR, IOS XE AND NX-OS AND RELATED  
09:22:42 19 DOCUMENTATION IF CISCO PROVES BY A PREPONDERANCE OF THE  
09:22:47 20 EVIDENCE THAT:  
09:22:48 21 1. CISCO'S WORKS ARE ORIGINAL.  
09:22:51 22 2. CISCO IS THE AUTHOR OR CREATOR OF THE WORKS, OR THE  
09:22:54 23 AUTHOR OR CREATOR ASSIGNED OR EXCLUSIVELY LICENSED THE WORKS TO  
09:23:01 24 CISCO.  
09:23:05 25 A COPYRIGHT OWNER MAY OBTAIN A CERTIFICATE OF REGISTRATION

09:23:09 1 FROM THE COPYRIGHT OFFICE. THE EVIDENCE IN THIS CASE INCLUDES  
09:23:12 2 26 CERTIFICATES OF COPYRIGHT REGISTRATION FROM THE COPYRIGHT  
09:23:15 3 OFFICE FOR CISCO'S COPYRIGHTED WORKS.  
09:23:21 4 IF YOU FIND THAT A CERTIFICATE WAS MADE WITHIN FIVE YEARS  
09:23:26 5 AFTER FIRST PUBLICATION OF THAT WORK, YOU MAY CONSIDER THAT  
09:23:30 6 CERTIFICATE AS EVIDENCE OF THE FACTS STATED IN IT.  
09:23:34 7 FROM THE CERTIFICATE, YOU MAY, BUT NEED NOT, CONCLUDE THAT  
09:23:38 8 THE WORK IS ORIGINAL AND COPYRIGHTABLE AND THAT CISCO OWNS THE  
09:23:43 9 COPYRIGHT IN THAT WORK.  
09:23:47 10 AN ORIGINAL WORK MAY INCLUDE OR INCORPORATE ELEMENTS TAKEN  
09:23:52 11 FROM PRIOR WORKS, FROM THE PUBLIC DOMAIN, AND/OR WORKS OWNED BY  
09:23:58 12 OTHERS WITH THE OWNER'S PERMISSION. THE ORIGINAL PARTS OF  
09:24:03 13 PLAINTIFF'S WORK ARE THE PARTS CREATED:  
09:24:05 14 1. INDEPENDENTLY BY THE WORK'S AUTHOR. THAT IS, THE  
09:24:09 15 AUTHOR DID NOT COPY IT FROM ANOTHER WORK.  
09:24:12 16 2. BY USE OF AT LEAST SOME MINIMAL CREATIVITY.  
09:24:17 17 IN COPYRIGHT LAW, THE ORIGINAL PART OF THE WORK NEED NOT  
09:24:20 18 BE NEW OR NOVEL.  
09:24:25 19 AN OWNER IS ENTITLED TO COPYRIGHT PROTECTION OF A  
09:24:29 20 COMPILATION. A "COMPILE" IS A WORK FORMED BY THE  
09:24:33 21 COLLECTION AND ASSEMBLING OF PRE-EXISTING MATERIALS OR OF DATA  
09:24:38 22 THAT ARE SELECTED, COORDINATED, OR ARRANGED IN SUCH A WAY THAT  
09:24:43 23 THE RESULTING WORK AS A WHOLE CONSTITUTES AN ORIGINAL WORK OF  
09:24:47 24 AUTHORSHIP.  
09:24:48 25 THE OWNER OF A COMPILE MAY ENFORCE THE RIGHT TO

09:24:53 1 EXCLUDE OTHERS IN AN ACTION FOR COPYRIGHT INFRINGEMENT.

09:24:59 2 THE CREATOR OF AN ORIGINAL WORK IS CALLED THE AUTHOR OF

09:25:05 3 THAT WORK. AN AUTHOR ORIGINATES OR MASTERMINDS THE ORIGINAL

09:25:09 4 WORK CONTROLLING THE WHOLE WORK'S CREATION AND CAUSING IT TO

09:25:12 5 COME INTO BEING.

09:25:13 6 A COPYRIGHT OWNER IS ENTITLED TO EXCLUDE OTHERS FROM

09:25:16 7 COPYING A WORK MADE FOR HIRE. A "WORK MADE FOR HIRE" IS ONE

09:25:19 8 THAT IS PREPARED BY AN EMPLOYEE AND IS WITHIN THE SCOPE OF

09:25:23 9 EMPLOYMENT.

09:25:31 10 A COPYRIGHT OWNER IS ENTITLED TO EXCLUDE OTHERS FROM

09:25:35 11 CREATING DERIVATIVE WORKS BASED ON THE OWNER'S COPYRIGHTED

09:25:39 12 WORK.

09:25:40 13 THE TERM DERIVATIVE WORK REFERS TO A WORK BASED ON ONE OR

09:25:43 14 MORE PRE-EXISTING WORKS, SUCH AS A TRANSLATION, MUSICAL

09:25:49 15 ARRANGEMENT, DRAMATIZATION, FICTIONALIZATION, MOTION PICTURE

09:25:53 16 VERSION, SOUND RECORDING, ART REPRODUCTION, ABRIDGEMENT,

09:25:57 17 CONDENSATION, OR ANY OTHER FORM IN WHICH A WORK MAY BE RECAST

09:26:02 18 OR ADAPTED.

09:26:04 19 ACCORDINGLY, THE OWNER OF A COPYRIGHTED WORK IS ENTITLED

09:26:08 20 TO EXCLUDE OTHERS FROM RECASTING OR ADAPTING THE COPYRIGHTED

09:26:12 21 WORK WITHOUT THE OWNER'S PERMISSION.

09:26:18 22 CISCO HAS THE BURDEN OF PROVING BY A PREPONDERANCE OF THE

09:26:20 23 EVIDENCE THAT ARISTA COPIED ORIGINAL, PROTECTED ELEMENTS FROM

09:26:23 24 CISCO'S COPYRIGHTED WORKS.

09:26:26 25 THERE ARE TWO WAYS THAT CISCO CAN MEET ITS BURDEN:

09:26:31 1 FIRST, CISCO MAY ESTABLISH ARISTA'S COPYING THROUGH DIRECT  
09:26:37 2 EVIDENCE. AN EXAMPLE OF DIRECT EVIDENCE WOULD BE AN ADMISSION  
09:26:42 3 BY ARISTA THAT PART OR ALL OF THE WORK WAS COPIED. DIRECT  
09:26:49 4 EVIDENCE MAY ALSO BE THE CREDIBLE TESTIMONY OF A WITNESS WHO  
09:26:53 5 SAW THE WORK BEING COPIED.

09:26:56 6 ALTERNATIVELY, CISCO MAY SHOW THAT ARISTA COPIED FROM  
09:27:01 7 CISCO'S COPYRIGHTED WORKS, THROUGH INDIRECT EVIDENCE BY PROVING  
09:27:05 8 BY A PREPONDERANCE OF THE EVIDENCE THAT ONE, ARISTA HAD ACCESS  
09:27:10 9 TO CISCO'S COPYRIGHTED WORKS.

09:27:12 10 AND TWO, THERE IS VIRTUAL IDENTITY BETWEEN ARISTA'S WORKS  
09:27:17 11 AND THE ORIGINAL PROTECTED ELEMENTS OF CISCO'S WORKS.

09:27:25 12 TO ESTABLISH INDIRECT EVIDENCE OF COPYING, CISCO MUST  
09:27:29 13 PROVE BY A PREPONDERANCE OF THE EVIDENCE THAT ARISTA HAD ACCESS  
09:27:32 14 TO CISCO'S COPYRIGHTED WORKS.

09:27:36 15 YOU MAY FIND THAT ARISTA HAD ACCESS TO CISCO'S WORKS IF  
09:27:40 16 ARISTA HAD A REASONABLE OPPORTUNITY TO VIEW, READ, OR COPY  
09:27:44 17 CISCO'S WORKS BEFORE ARISTA'S WORK WAS CREATED.

09:27:51 18 IF YOU FIND THAT ARISTA DID NOT HAVE ACCESS TO CISCO'S  
09:27:54 19 WORKS, YOU MAY STILL FIND THAT ARISTA COPIED CISCO'S WORKS IF  
09:27:59 20 THERE ARE STRIKING SIMILARITIES BETWEEN THE PROTECTABLE  
09:28:02 21 ELEMENTS OF THE WORKS.

09:28:08 22 TO ESTABLISH INDIRECT EVIDENCE OF COPYING, CISCO MUST  
09:28:12 23 PROVE VIRTUAL IDENTITY IN TWO STEPS. VIRTUAL IDENTITY MEANS  
09:28:17 24 DIFFERING BY NO MORE THAN A TRIVIAL DEGREE.

09:28:22 25 FIRST, CISCO MUST PROVE THAT THERE IS VIRTUAL IDENTITY

09:28:28 1 BETWEEN THE ORIGINAL PROTECTED ELEMENTS OF CISCO'S COPYRIGHTED  
09:28:31 2 WORKS AND THE CORRESPONDING ELEMENTS OF ARISTA'S WORKS THAT  
09:28:36 3 CISCO CLAIMS ARISTA COPIED.  
09:28:39 4 IN MAKING THIS COMPARISON, YOU MAY FIND ANY OF THE  
09:28:43 5 FOLLOWING ELEMENTS OF CISCO'S WORKS PROTECTED AS A COMPILATION  
09:28:51 6 IF YOU FIND THEY ARE ORIGINAL.  
09:28:54 7 1. THE SELECTION AND ARRANGEMENT OF CISCO'S MULTIWORD  
09:28:57 8 COMMAND LINE EXPRESSIONS.  
09:28:59 9 2. THE SELECTION AND ARRANGEMENT OF CISCO'S MODES AND  
09:29:02 10 PROMPTS.  
09:29:02 11 3. THE COLLECTION OF CISCO'S SCREEN RESPONSES AND  
09:29:07 12 OUTPUTS.  
09:29:07 13 4. THE COLLECTION OF CISCO'S HELP DESCRIPTIONS.  
09:29:11 14 5. CISCO'S USER INTERFACES AS A WHOLE AS COMPILATIONS OF  
09:29:17 15 ELEMENTS 1 THROUGH 4.  
09:29:19 16 6. EACH OF CISCO'S TECHNICAL MANUALS.  
09:29:25 17 IN MAKING THIS COMPARISON, YOU SHOULD NOT CONSIDER THE  
09:29:28 18 FOLLOWING ELEMENTS WHICH ARE NOT PROTECTABLE:  
09:29:30 19 1. INDIVIDUAL WORDS USED IN ANY OF THE ASSERTED ELEMENTS.  
09:29:36 20 2. ANY SINGLE MULTIWORD COMMAND.  
09:29:38 21 3. THE IDEA OR METHOD OF GROUPING OR CLUSTERING COMMANDS  
09:29:42 22 UNDER COMMON INITIAL WORDS, SUCH AS SHOW OR IP.  
09:29:54 23 4. ANY COMMAND HIERARCHY.  
09:29:56 24 5. SPECIFIC MODES AND SPECIFIC PROMPTS.  
09:29:59 25 6. THE IDEA OF A SET PATH WAY THROUGH A SERIES OF MODES.

09:30:03 1           7. THE IDEA OF MAKING CERTAIN COMMANDS AVAILABLE ONLY IN  
09:30:07 2 CERTAIN MODES.

09:30:12 3           8. USE OF COMMAND SYNTAX SUCH AS VERB, OBJECT,  
09:30:17 4 PARAMETERS.

09:30:17 5           THE CHOICE -- I'M SORRY.

09:30:20 6           9. THE CHOICE OF USING A TEXT-BASED USER INTERFACE.

09:30:24 7           10. THE IDEA OF USING MULTIWORD COMMAND EXPRESSIONS TO  
09:30:28 8 MANAGE OR CONFIGURE A DEVICE.

09:30:31 9           11. THE FUNCTION OF ANY ASSERTED FEATURE.

09:30:36 10          12. THE USE OF "?" TO CALL UP HELP DESCRIPTIONS.

09:30:42 11          13. INDIVIDUAL HELP DESCRIPTION PHRASES.

09:30:50 12          14. COMMAND PREFIXES THAT THE USER INTERFACE AUTO  
09:30:53 13 COMPLETES.

09:30:54 14          15. TAB COMPLETIONS.

09:30:57 15          IF CISCO PROVES VIRTUAL IDENTITY BETWEEN THE RELEVANT  
09:31:03 16 PROTECTED ELEMENTS, IT MUST ALSO PROVE THAT AN ORDINARY,  
09:31:07 17 REASONABLE OBSERVER WOULD FIND THE TOTAL CONCEPT AND FEEL OF  
09:31:11 18 ITS COPYRIGHTED WORKS AS A WHOLE TO BE VIRTUALLY IDENTICAL TO  
09:31:15 19 ARISTA'S CHALLENGED WORKS AS A WHOLE.

09:31:19 20          IN MAKING THAT COMPARISON, YOU SHOULD NOT CONSIDER  
09:31:22 21 ELEMENTS THAT ARE NOT ORIGINAL OR ARE NOT PROTECTABLE.

09:31:27 22          AS I PREVIOUSLY INSTRUCTED YOU, CISCO'S WORKS AS A WHOLE  
09:31:31 23 ARE ITS FOUR USER INTERFACES ASSOCIATED WITH ITS FOUR OPERATING  
09:31:37 24 SYSTEMS, AS WELL AS EACH OF CISCO'S ASSERTED TECHNICAL MANUALS.

09:31:44 25          ARISTA'S WORKS, AS A WHOLE, ARE THE USER INTERFACES FOR

09:31:47 1 EACH OF THE ACCUSED ARISTA OPERATING SYSTEMS AS WELL AS EACH OF  
09:31:52 2 ARISTA'S ACCUSED TECHNICAL MANUALS.

09:31:58 3 IF YOU CONCLUDE THAT CISCO HAS PROVEN, WHETHER BY DIRECT  
09:32:03 4 OR INDIRECT EVIDENCE, THAT ARISTA COPIED ORIGINAL, PROTECTED  
09:32:06 5 ELEMENTS OF CISCO'S WORKS, YOU MUST THEN DETERMINE WHETHER THAT  
09:32:12 6 COPYING WAS GREATER THAN DE MINIMUS, THAT IS MORE THAN A  
09:32:19 7 TRIVIAL AMOUNT OF CISCO'S WORKS AS A WHOLE.

09:32:22 8 IN MAKING THIS DETERMINATION, YOU SHOULD CONSIDER THE  
09:32:25 9 QUALITATIVE AS WELL AS THE QUANTITATIVE SIGNIFICANCE OF THE  
09:32:29 10 COPIED PORTION IN RELATION TO CISCO'S WORKS AS A WHOLE.

09:32:37 11 NOW I WILL EXPLAIN WHAT "FAIR USE" MEANS UNDER THE LAW.  
09:32:42 12 FOR ARISTA'S FAIR USE DEFENSE.

09:32:45 13 ONE WHO IS NOT THE OWNER OF A COPYRIGHT MAY USE A  
09:32:49 14 COPYRIGHTED WORK IN A REASONABLE WAY UNDER THE CIRCUMSTANCES  
09:32:53 15 WITHOUT THE CONSENT OF THE COPYRIGHT OWNER IF IT WOULD ADVANCE  
09:32:57 16 THE PUBLIC INTEREST. SUCH USE OF A COPYRIGHTED WORK IS CALLED  
09:33:06 17 A FAIR USE.

09:33:07 18 THE OWNER OF A COPYRIGHT CANNOT PREVENT OTHERS FROM MAKING  
09:33:11 19 A FAIR USE OF THE OWNER'S COPYRIGHTED WORKS.

09:33:14 20 IN DETERMINING WHETHER THE USE MADE OF THE WORK WAS FAIR,  
09:33:18 21 YOU SHOULD CONSIDER THE FOLLOWING FACTORS.

- 09:33:21 22 1. THE PURPOSE AND CHARACTER OF THE USE.
- 09:33:25 23 2. THE NATURE OF THE COPYRIGHTED WORK.
- 09:33:28 24 3. THE AMOUNT AND SUBSTANTIABILITY OF THE PORTION USED IN  
09:33:34 25 RELATION TO THE COPYRIGHTED WORK AS A WHOLE.

09:41:00 1 AFFIRMATIVE DEFENSE OF MERGER.

09:41:02 2 TO SHOW THAT CISCO'S COPYRIGHTED WORKS ARE SUBJECT TO

09:41:06 3 MERGER, ARISTA MUST SHOW THAT AT THE TIME CISCO CREATED THE

09:41:11 4 WORKS, CISCO HAD ONLY ONE WAY OR VERY FEW WAYS TO EXPRESS THE

09:41:17 5 IDEAS UNDERLYING THE ELEMENTS OF CISCO'S COPYRIGHTED USER

09:41:21 6 INTERFACES OR TECHNICAL MANUALS. MATERIAL IN AN ORIGINAL WORK,

09:41:27 7 EVEN MATERIAL THAT SERVES A FUNCTION, IS NOT SUBJECT TO MERGER

09:41:33 8 AS LONG AS THE AUTHOR HAD MORE THAN A FEW WAYS TO EXPRESS THE

09:41:37 9 UNDERLYING IDEA.

09:41:38 10 ARISTA HAS THE BURDEN OF PROVING THIS DEFENSE BY A

09:41:41 11 PREPONDERANCE OF THE EVIDENCE.

09:41:48 12 AFFIRMATIVE DEFENSE OF SCÈNES À FAIRE.

09:41:50 13 SCÈNES À FAIRE IS AN AFFIRMATIVE DEFENSE TO COPYRIGHT

09:41:54 14 INFRINGEMENT.

09:41:56 15 TO SHOW THAT PORTIONS OF CISCO'S USER INTERFACES ARE

09:42:00 16 SCÈNES À FAIRE MATERIAL, ARISTA MUST SHOW THAT AT THE TIME

09:42:03 17 CISCO CREATED THE USER INTERFACES, NOT AT THE TIME OF ANY

09:42:07 18 COPYING, EXTERNAL FACTORS OTHER THAN CISCO'S CREATIVITY

09:42:13 19 DICTATED THAT CISCO SELECT, ARRANGE, ORGANIZE AND DESIGN ITS

09:42:19 20 ORIGINAL FEATURES IN A MANNER IT DID.

09:42:21 21 THE SCÈNES À FAIRE DOCTRINE DEPENDS UPON THE CIRCUMSTANCES

09:42:25 22 PRESENTED TO THE CREATOR AT THE TIME OF CREATION, NOT THE

09:42:29 23 CIRCUMSTANCES PRESENTED TO THE COPIER AT THE TIME IT COPIED.

09:42:34 24 ARISTA HAS THE BURDEN OF PROVING THIS DEFENSE BY A

09:42:37 25 PREPONDERANCE OF THE EVIDENCE.

11:37:54 1 BEHIND.

11:37:54 2 SO TO THE EXTENT THEY ARE SUFFERING, IT HAS NOTHING TO DO

11:37:57 3 WITH THE FACT THAT ARISTA IS USING THE SAME COMMANDS THAT

11:38:03 4 EVERYBODY ELSE IN THE INDUSTRY IS USING.

11:38:08 5 SO LET ME GO TO MY KEY POINTS OF EVIDENCE, AND AS

11:38:11 6 JUDGE FREEMAN TOLD YOU, WE ARE GOING TO TALK HERE UNTIL LUNCH

11:38:14 7 TIME AND FINISH UP.

11:38:15 8 I WANT TO START HERE THAT ARISTA SWITCHES WERE DESIGNED

11:38:18 9 FROM SCRATCH, NOT COPIED FROM CISCO. THAT'S NOT DISPUTED AND

11:38:23 10 THOSE SWITCHES ARE REVOLUTIONARY TOO.

11:38:25 11 CISCO PROMOTED ITS CLI AS AN INDUSTRY STANDARD FOR ITS OWN

11:38:29 12 BENEFIT. THERE'S ENORMOUS AMOUNT OF EVIDENCE ON THAT. WE SAT

11:38:34 13 EVERY SINGLE DAY WITH EVERY SINGLE WITNESS, WE SAW EVIDENCE

11:38:38 14 THAT CISCO WAS PROMOTING THESE AS INDUSTRY STANDARD.

11:38:42 15 THIRD, COPYING UN PROTECTABLE ELEMENTS OF THE CLI IS NOT

11:38:45 16 INFRINGEMENT. WE HEARD TWO WEEKS OF TESTIMONY FROM CISCO ABOUT

11:38:50 17 THESE COMMAND LINES, JUDGE FREEMAN HAS TOLD YOU THESE

11:38:55 18 INDIVIDUAL COMMAND LINES, THE MULTIWORD COMMAND LINES THAT WE

11:38:59 19 ARE TALKING ABOUT, THEY ARE NOT EVEN PROTECTABLE BY LAW, NOT

11:39:02 20 EVEN PROTECTABLE. THEY HAVEN'T PROVEN THAT THEY HAVE SOME

11:39:07 21 UNIQUE COMPILATION OF THESE, NOT BY A MILE.

11:39:10 22 AND FINALLY, ARISTA'S USE OF THE IOS CLI IS A FAIR USE

11:39:13 23 CONSISTENT WITH INDUSTRY PRACTICES.

11:39:16 24 BY THE WAY, "FAIR USE" LOOKS TO THE PUBLIC INTEREST. I

11:39:19 25 HEARD IT CALLED AN EXCUSE. IT'S IN THE COPYRIGHT STATUTE. IT

01:34:51 1 FEATURE LIKE VLAN, YOU ARE GOING TO USE THE NAME THAT THE  
01:34:56 2 INDUSTRY HAS CHOSEN TO DESCRIBE IT, TIME, AFTER TIME, AFTER  
01:35:01 3 TIME.

01:35:02 4 NOW, GUESS WHAT, THE EVIDENCE SHOWS -- LET'S GO TO THE  
01:35:07 5 NEXT SLIDE. THE EVIDENCE SHOWS THAT EVEN AT CISCO THEY  
01:35:10 6 UNDERSTOOD THIS AND THEY TOLD THEIR ENGINEERS DON'T BE  
01:35:14 7 CREATIVE, BE COMMON, BE FAMILIAR.

01:35:18 8 THIS IS FROM THAT FAMOUS PARSER-POLICE MANIFESTO. WHEN  
01:35:23 9 NAMING A COMMAND, TRY TO PICK NAMES THAT WOULD BE FAMILIAR TO  
01:35:26 10 PEOPLE IN THE INDUSTRY. COMMANDS SHOULD BE SELF-EXPLANATORY SO  
01:35:31 11 THAT A KNOWLEDGEABLE USER, THAT'S THESE NETWORK OPERATORS, CAN  
01:35:36 12 FIGURE IT OUT WITHOUT SCURRYING OFF TO A MANUAL.

01:35:40 13 USE "AN ACCEPTED INDUSTRY ACRONYM." THAT'S JUST WHAT I  
01:35:45 14 WAS TALKING ABOUT, ALL THOSE PROTOCOL NAMES ARE ACCEPTED  
01:35:48 15 INDUSTRY ACRONYMS, THEY ARE TOLD TO USE THEM. DO NOT USE CODE  
01:35:50 16 NAMES.

01:35:52 17 NOW, THAT WAS THE GUIDANCE, BUT IN FACT, MR. REMAKER  
01:35:58 18 CONFIRMED THAT THAT'S WHAT THEY DID. HIS TESTIMONY WAS, THIS  
01:36:02 19 IS WHAT WE DO WHEN WE WRITE THESE COMMANDS. WE DON'T FREELANCE  
01:36:05 20 OR OFFROAD. KEEP IT SHORT. WHY? YOU ARE TYPING IT. AVOID  
01:36:11 21 COLLISIONS. WHAT HE SAID WAS "YOU DON'T USE THE SAME WORD  
01:36:14 22 TWICE AND MESS UP THE DEVICE."

01:36:16 23 CONSIDER THE AUDIENCE. WHAT DO NETWORK ENGINEERS  
01:36:19 24 UNDERSTAND? DO THEY WANT YOU TO WRITE OUT OSPF OR USE SOME  
01:36:24 25 OTHER WORD OR SOME OTHER NAME? NO. AND ARRANGED AND GROUPED

01:36:29 1 IN A LOGICAL EASY TO FIND ORDER.

01:36:32 2 IN OTHER WORDS, THESE ARE SOME OF THE LIMITATIONS.

01:36:34 3 AND MR. KATHAIL BACKED THAT UP. HE SAID THE COMMANDS

01:36:39 4 SHOULD COME FROM A VOCABULARY WHICH NETWORKERS USE DAY IN AND

01:36:44 5 DAY OUT. THAT'S TRUE. IF YOU ARE TALKING ABOUT HOCKEY, YOU

01:36:46 6 USE THE LANGUAGE OF HOCKEY. IF YOU ARE TALKING ABOUT

01:36:48 7 NETWORKING, YOU USE THE LANGUAGE OF NETWORKING THAT NETWORK

01:36:51 8 ENGINEERS ARE ALL FAMILIAR WITH.

01:36:54 9 AND THAT'S -- THAT IS TRUE FOR ALL OF THESE COMMANDS,

01:36:57 10 WHICH IS WHY NONE OF THIS IS PROTECTABLE. EITHER A SINGLE

01:37:03 11 MULTIWORD COMMAND, JUDGE FREEMAN HAS ALREADY TOLD YOU THAT, OR

01:37:07 12 THE COMPILATION ITSELF. THE COMPILATION IS NO DIFFERENT. IT'S

01:37:11 13 JUST A COLLECTION OF THESE COMMANDS, ALSO FROM INDUSTRY

01:37:15 14 STANDARD PROTOCOLS.

01:37:17 15 COULD I GO BACK TO THE COLOR-CODED CHART, MR. DAHM.

01:37:21 16 THE LAST POINT I'M GOING TO MAKE ON THIS PART OF IT IS

01:37:24 17 THAT AT LEAST SOMEONE MADE AN EFFORT TO ANALYZE THIS. AND THAT

01:37:28 18 WAS PROFESSOR BLACK. AND HE WENT THROUGH THEM ALL, HE

01:37:31 19 PRESENTED SOME OF THESE, BUT EVERYTHING IN GREEN IS DIRECTLY

01:37:35 20 FROM AN INDUSTRY STANDARD. DIRECTLY. EVERYTHING IN GRAY THAT

01:37:40 21 MR. NELSON WAS CALLING THAT THE BROWN STUFF, THAT'S ALL COMMON

01:37:44 22 TERMINOLOGY THAT PRE-EXISTED. "CLEAR," "CLOCK," "SHOW."

01:37:50 23 THE BLUE DON'T NECESSARILY COME DIRECTLY FROM A PROTOCOL,

01:37:55 24 BUT THEY ARE COMMON INDUSTRY TERMS THAT ANY NETWORKING ENGINEER

01:37:58 25 WOULD UNDERSTAND. "CONTROL PLANE," "TIME ZONE," "DYNAMIC,"